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ABSTRACT

As schools increasingly take advantage of sophisticated technologies to enhance education, their need to understand basic copyright law becomes more urgent. This reference guide reviews the historical development of copyright, examines basic components, and analyzes exceptions to copyright owners' rights. Also covered are key areas such as photocopying, computer software, and off-air taping. Copyright provides authors with exclusive rights of reproduction, adaptation, publication, performance, and display of their materials. Authors may license one right for someone's use; this use does not extend to other rights. Copyright is not a property right granted in perpetuity. To promote the progress of the sciences and the arts, the 1976 Copyright Law made the duration of copyright the life of the author plus 50 years. Public domain and statutory exceptions covering fair use, school library use, performance, and public and instructional broadcasting are summarized. Questions and answers involving school applications are provided throughout the discussion and in the first appendix. Thirteen other appendices provide print, music, off-air taping, and interlibrary guidelines for educational institutions, along with federal forms for registering copyrights and sample school policies. (MLH)

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COPYRIGHT LAW: A GUIDE FOR PUBLIC SCHOOLS

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The National School Boards Association is a not-for-profit organization whose primary mission is the advancement of education through the unique American tradition of local citizen control of, and accountability for, the nation's public schools. In this way, education policy is decided by local school board members who are directly accountable to the community. NSBA promotes the quality of education through services to state school boards associations and local school districts. It represents school boards' interests in Washington, D.C., before Congress, federal education agencies, and other national regulatory bodies.

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NATIONAL SCHOOL BOARDS ASSOCIATION
Council of School Attorneys

**COPYRIGHT LAW:
A GUIDE FOR PUBLIC SCHOOLS**

August W. Steinhilber
Associate Executive Director
and
General Counsel
National School Boards Association

COPYRIGHT LAW is a publication of the National School Boards Association Council of School Attorneys. The Council is a component of NSBA's Center for State Legislation, School Law and Public Policy: Nellie C. Weil, President; Thomas A. Shannon, Executive Director; August W. Steinhilber, General Counsel and Associate Executive Director; Gwendolyn H. Gregory, Deputy General Counsel; Martharose Laffey, Assistant Executive Director; Susan R. Butler, Administrative Director; George T. Rogister, Chairman, NSBA Council of School Attorneys; Naomi E. Gittins, Staff Attorney.

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TABLE OF CONTENTS

Foreword	v
Introduction	1
History of Copyright Law	2
What is a Copyright?	4
Copyright, Patent or Trademark?	5
Public Domain	6
Statutory Limitations	6
Fair Use	6
School Libraries	8
Performance Rights	10
Public and Instructional Broadcasting	11
Off-Air Taping of Television Programs	12
Photocopying	15
Computer Software	16
Made for Hire	19
Enforcement of Copyright Laws	19
School District Compliance with Copyright Laws	21
Conclusion	21
Appendices	
I. Questions and Answers	24
II. U.S. Const., Art. I, §8	36
III. Copyright Act §§ 101-118, 501-507	37
IV. Legislative History	70
V. Print Guidelines	71
VI. Music Guidelines	74
VII. Off-Air Guidelines	76
VIII. Interlibrary Guidelines	78
IX. Display and Order Warning	81
X. Registering Copyrighted Material—Sample Policy	82
XI. Federal Forms for Copyright Registration	83
XII. Obtaining Permission to Use Copyrighted Materials— Sample Policy and Letter	110
XIII. Including Teacher Created Materials in County Publications—Sam- ple Policy, Permission Form and Acknowledgement Page	113
XIV. Professional Research and Publishing (Works for Hire)—Sample Policies	117

FOREWORD

NSBA'S Council of School Attorneys presents *Copyright Law: A Guide for Public Schools* as a much needed reference for schools which must comply with copyright law in many aspects of their daily operation. The need to understand the basics of copyright law becomes even more apparent as schools increasingly take advantage of some of the most progressive technology available to enhance education, for instance in the field of computers.

This publication provides a fundamental understanding of copyright by reviewing the historical development of the law, examining the basic components of copyright and analyzing the exceptions to the rights of copyright owners. Also covered are key areas such as photocopying, computer software and off-air taping. The appendices containing the print, music, off-air taping and interlibrary guidelines in addition to some of the federal forms for registering copyrights and sample school policies covering copyright will prove especially useful.

The author, August W. Steinhilber, has served as associate executive director and general counsel to the National School Boards Association for the past eight years of his eighteen years of service to NSBA. His experience in education law extends back to 1960 when he served as Deputy Assistant Commissioner for Legislation in the U.S. Office of Education, Department of Health, Education and Welfare. Mr. Steinhilber currently chairs the Educators' Ad Hoc Committee on Copyright Law and was previously appointed by the U.S. Copyright Office to negotiate an agreement between the television industry and the education community on off-air taping of TV programs for universities and schools. In addition to Mr. Steinhilber's expertise, this publication also has the benefit of the experience and study of Dr. Robert E. Clark who wrote the section on computer software.

The Council offers this publication with the expectation that it will serve as a useful guide to those schools with questions regarding the applicability of copyright law to their particular educational methods and practices. Certainly, it will help to make schools more aware of their privileges and responsibilities in this vital area of the law.

George T. Rogister
Chairman
Council of School Attorneys
April 1986

COPYRIGHT LAW: A GUIDE FOR PUBLIC SCHOOLS

August W. Steinhilber
Associate Executive Director
and
General Counsel
National School Boards Association

INTRODUCTION

The copyright law of 1976 (PL 94-553)¹ has been discussed, cursed and misunderstood by many. Its impact on education occurs both on the supply side and on the demand side. Why? Because those in education both produce and use copyrighted materials. The conflict arises between those who consider copyrighted material to be *their* property and those who believe that the progress of our society depends on the study and subsequent improvement of those same copyrighted materials. Consider the following typical situations, where a copyright problem may or may not be involved:

1. The head of a closed circuit television station, together with the head of the local English department, wishes to develop a series of programs on the 20th century novel wherein excerpts of novels will be read and discussed each week for eight weeks.
2. The school newspaper wants to run several class pictures of the school's outstanding seniors. The pictures were taken by a professional photographer for the school yearbook.
3. The head of the music department has decided to have a fund raiser for the band. He has arranged for the Beach Boys to give a concert in the school auditorium for just \$2,000. The auditorium seats 1,000. He is sure he can sell tickets for the concert for \$10 each. All the proceeds will be used for band uniforms.
4. The football coach has a great idea for the homecoming game. He can get an alumnus of the school who is now a country music star to play at half-time for free. It's sure to make the game a sellout at \$10 per person, even though the team hasn't won a game for three years.
5. The science teacher requests that the audiovisual department tape, off-the-air, tonight's segment of "Nova" so she can play it in her class the following day.

¹ 17 U.S.C. § 101 *et seq.* (1976).

6. The local cable franchise is up for political grabs. A promoter of one cable company has promised to dedicate a channel to the school system so it can show, all day long, instructional films previously purchased by the school system.
7. The head of the special education department wants to develop a program of talking books for the blind. She has arranged to have some senior students and parents make the recordings. The local association for the blind which supports the idea wants to know if it can use the recordings.
8. The school system has a swing band which plans to have a series of performances in the school auditorium. The music will be almost identical to that which will be played by a popular national rock group appearing in town at the same time. There will be a \$10 admission charge. After expenses, the proceeds will be used to buy musical instruments.
9. The head of the economics office thinks the information in the current issue of *Time* magazine is great. He intends to use the data, put it onto a bar graph, and include it in a textbook he is writing.

Is there a danger of copyright infringement in these situations? What can and should the schools do in these situations? To better understand the solution to these problems, it is necessary to first look at the background of the copyright laws, as well as their meanings and interpretations.

HISTORY OF THE COPYRIGHT LAW

The earliest statutory copyright law—an English law chartering the Stationer's Company in 1556²—was not based on the property rights of the owner but rather on the twin concepts of censorship and monopoly. The main objective of the English law was to ensure the suppression of the religious philosophy of the Reformation. It forbade the printing of books unless they were registered by a member of the licensing company. It was not until the Statute of Anne in 1709³ that the concept of copyright as a means of protecting the author's rights came into being. Under that law, authors received protection for a period of fourteen years for their work, with a right to renew for a second identical term.

The concept of copyright as protecting the author's rights transferred readily from England to the American colonies. In this country, twelve of the original thirteen states had a copyright law in one form or another prior to the Constitutional Convention.⁴ At the convention itself, several clauses addressing the issue were considered in formulating a constitutional foundation for a future national copyright law, including clauses that would

- secure for authors exclusive rights for a certain time;
- secure for literary authors their copyrights for a limited time;
- secure for authors the exclusive right to their performances and discoveries; and

² Hallam, 1 Constitutional History 238.

³ 8 Anne c. 19, 1710.

⁴ 24 Journals, Continental Congress 326 (1783).

- encourage, by proper premiums and provisions, the advancement of useful knowledge and discoveries.⁵

Found in Article I, § 8 of the United States Constitution, the final language of the Constitution's copyright clause grants Congress the power:

To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.⁶

Unlike many other countries, which adopted a proprietary rights philosophy toward copyright, American copyright law sought to strike a balance— considering both the rights of the authors of copyrighted materials and the rights of the public, including users.⁷ This difference in philosophy can be traced to the historic distrust with which the colonies viewed monopolies, which had been frequently misused by the English monarchs to restrict colonial freedoms. From that time onward, the granting of monopolies for any reason, no matter how noble the cause, was looked upon with distaste and distrust.

Today's federal copyright law is the product of a long evolution from that first constitutional clause. The first federal copyright law in the United States was the Copyright Act of 1790.⁸ It was subsequently expanded in 1802, and revised in 1831, 1870, 1909, and 1978.⁹ In 1984 the Act was again amended to add the Semiconductor Chip Protection Act and to alter provisions regarding audio recordings.¹⁰

This statutory evolution has occurred and will continue because copyright law is inextricably entwined with new technology. The 1831 act had to be amended in 1865 to extend protection to photography and negatives. The 1909 law was enacted before the juke box, sound recordings, motion pictures, radio, television, etc. Today's copyright holders face new legal conflicts because of cable television, home video recordings, and computers.

Part of the difficulty with copyright law arises because owners of copyrighted materials do not all perceive their rights in the same way. The copyright bar is dominated by lawyers representing copyright owners who believe that copyright is a property right which should exist in perpetuity. Also, few courts understand the new technology. The subject matter for copyright keeps expanding into areas far beyond printed materials. The courts, caught up with these complexities, do not rule consistently.

To illustrate the differences in perceptions with which courts must grapple, consider the following example. In the eyes of a copyright owner, does someone who copies an entire work infringe the owner's rights? A book publisher will say yes, contending that fair use extends only to excerpts. In contrast, an owner of a television program will object to any cutting of his work because he fears it may

⁵ *Id.*

⁶ U.S. Const., Art. I, § 8, Cl. 8.

⁷ In most foreign countries, copyright is couched in terms of intellectual property and given the same protection as other forms of property. International organizations carry this philosophy in their very names; for example, the World Intellectual Property Organization.

⁸ Copyright Act of May 31, 1790, 1 Stat. 124.

⁹ 2 Stat. 171 (1802); 4 Stat. 436 (1831); 16 Stat. 212, Rev. Stat. § 4948.71 (1870); 35 Stat. 1075-88 (1900); 90 Stat. 2541 (1976).

¹⁰ 17 U.S.C. §§ 901—904; 109, 115. The audio recording amendment forbids the rental, lease or lending of phonorecords for commercial advantage. The provision does not apply to nonprofit libraries and educational institutions.

be taken out of context or that the cutting would destroy the artistry of the work as a whole.

New technology and interpretation of the copyright law present many other questions, such as:

- Is the computer chip itself as well as the program copyrightable? Or is it a patent? Or is it something else?
- Is the placing of copyrighted materials within a computer memory merely storage like putting a book on a library shelf or is it a copy subject to copyright law?
- Should the legal phrase "effect . . . upon the potential market" be interpreted to require a showing of damage or does the mere influence of a market place suffice to show damage?

Courts and lawyers react differently to all these questions.

Some legal scholars are beginning to ask how or whether copyright makes sense in current times. Does the duration of copyright, i.e., the life of the creator plus 50 years, actually encourage the progress of science and the useful arts. At what time does duration hamper progress?

Those lawyers and associations who represent copyright owners have in the past and will continue in the future to be wary of any law or practice that would result in their rights being frozen in time. They fear either that they will be unable to increase the monetary value of their copyrights in a new market based on new technology or that a still newer technology may result in a devaluation or freezing of the value of their copyright protection.

WHAT IS COPYRIGHT?

Copyright is a means which provides authors with the exclusive right to reproduce their materials in copies or phonorecords, to prepare derivative works from their materials, to distribute copies or phonorecords of their materials, to perform the materials publicly and to display the materials publicly.

A copyright in a work exists immediately upon the creation of that work.¹¹ Registration with the Registrar of Copyrights is not a condition of copyright. However, registration is necessary before any lawsuit alleging infringement can be filed. Similarly, failure to place a notice of copyright (© generally; or Ⓒ for phonorecords) does not invalidate the copyright. But while failure to place notice on the material can be corrected, anyone who uses the materials *before* notice is given cannot be held liable for any damages, but can only be enjoined from further infringing use.¹²

Copyright exists in any original work when it becomes fixed in a tangible form.¹³ It can cover such things as:

- computer programs;
- literary works;
- sound recordings;

¹¹ S. Rep. No. 94-473, 94th Cong. 1st Sess. 112 (1975). H.R. Rep. No. 94-1476, 94th Cong. 2d Sess. 129 (1976).

¹² 17 U.S.C. § 405(b).

¹³ 17 U.S.C. § 102(a).

- audiovisual works including motion pictures;
- musical works;
- dramatic works; and
- pictorial, graphic and sculptural works.

It is important to note, however, that copyright does not exist in:

- works not fixed in a tangible form, such as speeches that have not been written or recorded;
- titles, names, slogans, coloring, or lists of ingredients;
- ideas, procedures, concepts, principles, discoveries or devices;
- something consisting entirely of information that is common property, such as calendars, height and weight charts, measurement charts, etc.; and,
- raw data or raw information.

The granting of a copyright gives the owner exclusive rights of reproduction, adaptation, publication, performance, and display. Each of these rights is severable. While the author may at one time license one of his rights for use by someone, that use does not extend to other rights. For example, a school's purchase of a literary work which is a play does not mean the drama department can use the book to put on a performance for parents and friends. Neither can a piece of sheet music be purchased and then 80 copies reproduced for all the students in the school choir.

It must be also be emphasized that copyright is not a property right as lawyers look at property rights, i.e., something freely transferrable in perpetuity. The purpose of copyright, found in Article I, § 8 of the Constitution, is to promote the progress of the sciences and the arts, and the duration of the property right is therefore limited. The U.S. Supreme Court has called copyright a statutory monopoly, and, as noted earlier, under our system of jurisprudence, all monopolies are viewed with a degree of suspicion.

The 1976 law which became effective January 1, 1978, (see Appendix IV) made the duration the life of the author, plus 50 years. For joint works the term is measured from the date of death of the last surviving author. The duration of works "made for hire," meaning those in which a corporation or business owns the copyright, is 75 years from the year of first publication and distribution. For unpublished works, the term is 100 years from creation.¹⁴ The law also continues the difference between dramatic works and performances, which are frequently called "grand rights" and nondramatic works or "small rights."¹⁵

COPYRIGHT, PATENT OR TRADEMARK?

Much confusion arises over the terms copyright, patent and trademark; they are often in error used interchangeably. A copyright is *not* the same as a patent or trademark. A patent for an invention is granted by the Patent and Trademark Office. An application must be submitted for a patent and then approved.¹⁶ In

¹⁴ 17 U.S.C. § 302(b), (c).

¹⁵ G. Latman, *Copyright for the Eighties* 458, 459 (1981).

¹⁶ 35 U.S.C. §§ 100-103, 171, 271.

contrast, a copyright exists on creation of the work and may be registered with the U.S. Copyright Office. The patent gives the owner the right to exclude others from making, using, or selling the invention but does not grant a right to the owner to make, sell or use. Most patents last for only seventeen years, while copyrights exist for life of the author, plus 50 years or, in the case of works made for hire, 75 years.

A trademark is a work, name, symbol or device used in business.¹⁷ It indicates the source or origin of the goods and is used to distinguish them from the goods of others. A trademark is granted by the U.S. Patent and Trademark Office for a 20-year period and can be renewed as long as it is properly used.

PUBLIC DOMAIN

Several concepts and laws place limits on the value of an owner's copyright. One of these is the concept of the "public domain." While copyrighted materials are protected, those materials in the public domain are "free as the air."

How does a work become part of the public domain? The first way is by the expiration of the copyright. The second is failure to place the copyright notice on anything published prior to January 1, 1978. After that date, if notice is omitted and a work is not registered within five years, then it enters the public domain.¹⁸ Nearly everything written and published for the federal government is in the public domain.

STATUTORY LIMITATIONS

Sections 107 through 118 of the Copyright Act (see Appendix III) contain limitations on the exclusive rights of copyright owners. These limitations mean that one need not ask permission or pay a royalty when using copyrighted materials under the terms of the limitation. The use is granted by the statute, not by the copyright owner.¹⁹

Fair Use Exception

● Overview

The concept of fair use was developed by the courts over one hundred years ago.²⁰ The judicial doctrine of fair use recognized the right of the public as against the statutory grant of a monopoly. It has now been codified in § 107 as a right of users—an exception to the law rather than a technical infringement of it. Fair use has been described as:

- fair dealing with someone's property right;
- common sense;
- a use that is *de minimus* in terms of amount used or amount of damage;
- an exception to copyright when that monopoly no longer furthers the progress of science;

¹⁷ 15 U.S.C. § 1127.

¹⁸ 17 U.S.C. § 405; see H.R. Rep. No. 94-1476, 94th Cong. 2d Sess. 146-149 (1976).

¹⁹ 17 U.S.C. §§ 107-118.

²⁰ *Folsom v. Marsh*, 9 Fed. Cas. 342, 348, No. 4,901 (C.C.D. Mass. 1841).

- a legal concept that keeps the copyright laws from being in violation of the first amendment's free speech and freedom of press provisions;
- a rule of reason when dealing with the copyright monopoly;
- a productive use which leads to greater progress or a new product; and,
- a necessary provision which establishes consistency between the Copyright Act and the U.S. Constitution's rationale authorizing copyright, "to promote the Progress of Science and useful Arts."

Section 107, the statutory codification of the fair use doctrine, states:

Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and,
- (4) the effect of the use upon the potential market for or value of the copyrighted work.²¹

These factors, which are anything but precise, have been interpreted by four private guideline agreements between the education community and copyright proprietors. The guidelines which have been sanctioned by Congress are:

- photocopying of printed materials (*see* Appendix V);
- photocopying of music (*see* Appendix VI);
- photocopying-interlibrary arrangements (*see* Appendix VIII); and,
- off-air-taping of television programs (*see* Appendix VII).

The right of fair use exists in addition to any other right that a user may have in any other section of the law. The fair use doctrine applies to both commercial users and to not-for-profit users. This publication will focus on the latter.

● Factors

In deciding whether or not a use constitutes fair use under the copyright law, several factors must be considered:

²¹ The legislative history of the section contains two important concepts: "Section 107 is intended to restate the present judicial doctrine . . . not to change, narrow, or enlarge it in any way." The section "is the result of a process of accretion . . . the doctrine has as much application to photocopying and taping as to other forms of use." H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 66 (1976).

1. *The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational use.* The legislative history is clear that Congress did not intend to establish a not-for-profit education exception. Courts have ruled that non-commercial use with an educational motivation does not automatically constitute fair use. However, an educational use may aid in swaying a decision toward a finding of fair use. Clearly education's right to fair use will diminish when the item used was designed exclusively for education.
2. *The nature of the copyrighted work.* In order to measure one's actions against this factor, one must ask a number of questions. Are the materials out of print and unavailable? Is it available through normal channels? Is the item to be copied produced for the education market or for another purpose? Will this distribution serve the public interest? Will the use stifle the incentive to produce or create new works?
3. *The amount and substantiality of the portion used in relation to the copyrighted work as a whole.* The larger the portion of a particular work that is used, the less likely fair use will be considered a defense. However, the fact that an entire work is copied does not automatically rule out fair use. Courts will also look at such factors as the length and frequency of use.
4. *The effect upon the potential market.* Little legislative history exists to further explain or describe this factor. Yet the courts have scrutinized this factor very closely, especially the term "potential." It has been said that a copyright owner has a bundle of rights including such things as the book rights, paperback rights, movie rights, television rights, etc. Thus the courts will consider the effect on the original medium and the effect on other media even though the owner of the copyright has not yet used that medium.

Satire and parody have successfully been justified on the basis of fair use even when used by profit-making enterprises. The parody has neither the intent nor the effect of diminishing or undermining the demand of individuals to see or hear the original. But even a satire may be an infringement if the entire work is used.²²

Other questions must be asked to determine whether a particular use qualifies as fair use. Does the use tend to diminish potential sales? Does the use have a negative cumulative effect? Has the use of copies affected the demand for the original? Obviously, the plaintiff trying to prove that an infringement has occurred will try to show actual damage through sales records, etc.

School Libraries Exception

● Overview

The operation of school and public libraries is made possible by the "first sale doctrine."²³ This legal concept permits any owner of a copy of a written work or a sound recording to sell or otherwise dispose of that copy. Thus, the copyright

²² An obvious conflict with the entire work factor was legislated into the general statement on fair use when Congress added "teaching (including multiple copies for classroom use)." 17 U.S.C. § 107.

²³ 17 U.S.C. § 109(a).

owner's exclusive right to distribute this work is limited to the first sale. Thereafter the owner of the copy may freely distribute it. It can be rented, leased, lent or resold for commercial or non-commercial purposes.²⁴

In addition to the first sale doctrine, § 108 of the Copyright Act recognizes the right of libraries to make copies of copyrighted books for themselves and their public. This special right is in addition to the right of fair use; it applies both to school libraries and public libraries. More plainly stated, if an activity is authorized under either fair use (§ 107) or library use (§ 108), a school may carry out the activity *without* requesting permission.

Under § 108 libraries may reproduce and distribute one copy of a phonorecord under the following conditions:

- the copying or distribution is made without any direct or indirect commercial purpose;
- the collections of the library must be open to the public or be available to researchers not affiliated with the library or institution; and,
- the reproduction carries the copyright notice.²⁵

The section also authorizes the library to make a single copy of an entire *unpublished* work for preservation, security or for deposit in another library, provided the library currently has the item in its collection.

A library can reproduce an entire published work in its collection if it is damaged, deteriorating, lost or stolen, after it has been determined that an unused replacement cannot be obtained at a fair price. A similar authority exists to reproduce an out-of-print item either from the library's own collection or from another library.²⁶

The law also recognizes the rights of a library to copy articles from journals or periodicals and to use these copies in interlibrary loan transactions, provided:

- the copy was requested by a student or library user or "other" library;
- the copy becomes the property of the person or library requesting same;
- only one copy is made for a specific individual;
- the library has no knowledge that the copy will be used for anything other than private study, scholarship, or research; and,
- the order form requesting the copy contains the copyright warning prescribed by the Register of Copyrights.²⁷ (see Appendix IX)

Section 108 also makes clear that neither the library nor library employees are liable for the misuse of coin-operated photocopier machines located on the library premises provided the library displays a proper copyright warning on the machine. Individuals using the machine have the benefit of any exception contained in the law:

²⁴ H.R. Rep. No. 94-1476 at 79.

²⁵ 17 U.S.C. § 108.

²⁶ *Id.*

²⁷ 17 U.S.C. § 108(d).

● Restrictions

There are different restrictions in § 108 in addition to those which can be deduced from looking at the previously mentioned authority. The House of Representatives' report on the bill states:

Under section 108, a library in a profit-making organization would not be authorized to:

- (a) use a single subscription or copy to supply its employees with multiple copies of material relevant to their work; or
- (b) use a single subscription or copy to supply its employees, on request, with single copies of material related to their work, where the arrangement is "systematic" in the sense of deliberately substituting photocopying for subscription or purchases; or
- (c) use "interlibrary loan" arrangements for obtaining photocopies in such aggregate quantities as to substitute for subscriptions or purchase of material for employees in their work.²⁸

Subsection 108(h) contains restrictions on multiple or systematic copying. Guidelines adopted by the congressional conference in essence say:

- if in any calendar year a library intends to make more than five copies from all issues of a specific periodical which are less than five years old, or
- if within a calendar year a library intends to make more than five copies from or of any other type of copyrighted work, then the library must buy that periodical or other work.²⁹ (see Appendix VIII).

Subsection 108(h) excludes reproduction rights of musical works, motion pictures, audiovisual works not dealing with news, and other pictorial/graphic works. The law does permit some reproduction under this subsection if it is to replace damaged or missing copies.

Performance Rights Exception

The performance or display of a work in a classroom by instructors or pupils is not an infringement.³⁰ For example, if the drama department acts out "The King and I" as part of a classroom activity, there is no infringement. There is no limitation on the types of works covered by this exemption. Teachers and students may freely perform or display any material, e.g., a copyrighted article may be shown on an overhead projector. The term "instructor" has been interpreted to include guest lecturers.³¹

There are limitations to this exception. For example, the performance must be part of the instruction and not given for the recreation or entertainment of any part of the audience. The performance may not be broadcast by either radio or television, but it may be amplified or projected within the same building or general area, meaning within a campus or cluster of buildings, but not an entire

²⁸ 17 U.S.C. § 108 (g)(2).

²⁹ 17 U.S.C. § 108(g)(6)(1)(2).

³⁰ 17 U.S.C. § 110. See H.R. Rep. No. 94-1476, 94th Cong. 2d Sess. 81-86 (1976).

³¹ *Id.*

school system.³² Thus, a performance could be played over a school's public address system, but it could not be broadcast systemwide.

The statute contains another educational exemption for the performance of nondramatic literary or musical works.³³ Such a performance is permitted even where admission is charged, if:

- the proceeds after deduction for costs are used for educational, religious or charitable purposes, and
- the performers, promoters or organizers are not paid; salaries paid to teachers or other school employees do not negate the exemption.

Two other statutory provisions may be applied to performances in public schools. Section 110(5) extends an exemption applicable to the private home to permit turning on a T.V. or radio in a public place, provided there is no further amplification. Section 110(8) gives a broad exemption for special performances of nondramatic works for the deaf or blind.³⁴

In summary, great latitude exists within the classroom for the performance of dramatic and nondramatic works; latitude also exists for nondramatic works performed by a school system outside the classroom. There is little latitude, however, for dramatic performances outside the classroom; in such situations permissions including royalties must be paid. One of the rationales for the difference between dramatic and nondramatic performances is that a school performance for the public of "Fiddler on the Roof" is more likely to affect the market for a commercial production of the same play. But in the case of musical compositions, the rationale continues, the public is more interested in the performer than in the work performed.

Public and Instructional Broadcasting

Public broadcasting enjoys certain rights not extended to commercial broadcasting, while instructional broadcasting is given greater latitude in the use of copyrighted materials.³⁵

Public broadcasting is that which is directed to the public at large and is cultural or educational in nature. Legal questions relating to public broadcasting should be referred to the Corporation for Public Broadcasting, 1111 16th Street, N.W., Washington, D.C. 20036.

Instructional broadcasting is defined as "systematic instructional activities of a governmental body or nonprofit educational institution" whose reception is primarily for classrooms or similar places, the disabled unable to be in class, and offices or employees of governmental bodies.³⁶ The fact that the broadcast can be received by the general public does not preclude it from being defined as instructional broadcasting. Similarly, college lectures clearly fall into this category.³⁷

Instructional broadcasting can take advantage of all the provisions of fair use. In addition:

³² *Id.*

³³ 17 U.S.C. § 110(4).

³⁴ 17 U.S.C. § 110(8).

³⁵ H.R. Rep. No. 94-1476 at 81-86.

³⁶ 17 U.S.C. § 110 (2)(A)(B)(C)(i)(ii)(iii).

³⁷ H.R. Rep. 94-1476 at 83-84.

- it is exempt from copyright clearances and payment for the use of nondramatic literary or musical works or for the display of nondramatic works;³⁸
- it can make up to 30 copies of a particular transmission which includes the nondramatic literary or musical works;³⁹
- it may perform sound recordings without clearances or payment;⁴⁰ and
- it may transmit performances of nondramatic literary works specifically designed for the handicapped.⁴¹

OFF-AIR TAPING OF TELEVISION PROGRAMS: PIRACY OR FAIR USE?

Overview

One of the thorniest legal issues of copyright law for nonprofit educational institutions involves off-air-taping of television programs for classroom use. One reason for this complexity is the number of extremely diverse groups involved. They include:

- guilds and unions;
- authors and directors;
- commercial networks;
- the motion picture industry;
- public television; and,
- the audiovisual industry.

Each of these groups has legitimate fears. For example:

- Several groups fear that technology will destroy their potential profit. They remember that the last copyright revision in 1908 came before juke boxes existed; juke boxes were subsequently ruled not to be subject to copyright law. The technology now exists for nearly everyone to afford a video-copier or a microcomputer. The cost of a satellite disc has dropped dramatically. What will happen next?
- Unlike authors of printed materials who want to restrict photocopies to excerpts, the television industry wants to prevent the creation of anthologies; to protect undisturbed the artistic nature of the program and to ensure that nothing will be taken or used out of context.
- The networks are concerned with libel. How can they restrict reuse of libelous material so as to diminish damages?
- The unions, such as the Screen Actors Guild, are interested in residuals, i.e., up-front payment for rebroadcast rights.

³⁸ 17 U.S.C. § 110(2).

³⁹ *Id.* at § 112(b).

⁴⁰ *Id.* at § 114(b).

⁴¹ *Id.* at § 110(8).

- Owners of copyrights fear that they will be unable to sell secondary rights (such as 16 millimeter film rights) if video tapes satiate all potential users of those films.
- All these groups are concerned about systematic taping by school systems that form master libraries of television broadcasts.

Judicial Interpretation

The major video tape recording case, eventually reaching the U.S. Supreme Court, is *Universal City Studios v. Sony*.⁴² In *Sony* the plaintiff challenged the existence of home television recorders. The U.S. District Court found for the defendant-recorder manufacturers. It ruled that:

- the law does not give copyright holders monopoly power over an individual's off-the-air copying in his home for private use;
- even if the law did prohibit the copying, Sony would not be liable under any theory of direct or contributory infringement or vicarious liability;
- the retailers were not guilty of infringement; and
- none of the defendants unfairly competed with the plaintiffs or interfered with their advantageous business relationship.

The Ninth Circuit Court of Appeals found differently. It decided that:

- video taping at home was not fair use; and,
- the manufacturers and distributors engaged in contributory infringement.

The appeals court remanded the case for further consideration of the defendant's claim of unfair competition and its affirmative defenses of laches, copyright invalidity and unclean hands.

The U.S. Supreme Court in a 5-4 opinion reversed the court of appeals and indicated that:

- copyright law unlike patent law does not expressly render anyone liable for the infringement committed by another. Vicarious liability requires an ongoing relationship between direct infringer and contributory infringer. In this case, Sony's only relationship is the sale of the video cassette recorder.
- infringement for a noncommercial use of a copyrighted work requires proof that the particular use is harmful or if widespread *would* affect the potential market; (emphasis added)
- the Copyright Act does not indicate that time shifting by millions of Americans is unlawful; nor is there any flat prohibition against the sale of the machines that make copying possible. Congress may wish to take a fresh look at these issues, but the Supreme Court will not apply laws that have not yet been written.

Another pertinent case involving off-air taping is *Encyclopaedia Britannica Educational Corp v. Crooks*.⁴³ In this case, an intermediate school district, com-

⁴² 480 ESupp. 429 (1979), *rev'd*, 659 F2d 963 (9th Cir. 1981), *rev'd*, 104 S.Ct. 774 (1984).

⁴³ 447 ESupp. 243 (W.D.N.Y. 1978), 542 ESupp. 1156 (W.D.N.Y. 1982), 558 ESupp. 1247 (W.D.N.Y. 1983).

posed of nineteen local school districts, systematically taped television broadcasts off-the-air, and from cable television programs and microwave transmissions. It had a library of 5000 video programs available to the local school districts.

In 1982 the court found that the district's copying practices were not fair use. The court reviewed each of the four factors making up that doctrine—purpose and character of the use, nature of the copyrighted materials, substantiality of use and effect upon potential market. Furthermore, the court declared, the copying did not enjoy first amendment protection nor was it insulated by the doctrine of estoppel.

The district court's decision in 1983 addressed what the intermediate school district could do in the future, and the awarding of costs, attorneys fees, and damages. As to future use, the court flatly refused to let the defendant continue its off-air taping practices even though the school district agreed to abide by the guidelines which had been developed in 1981 (see Appendix VII). The court noted that this ruling applied only to the parties in this case based on the facts presented. The court declared the infringement in this case to be so flagrant that it completely refused to alter its injunction in any respect.

The court denied an award of attorneys' fees but granted the plaintiff court costs and \$250 for each infringement.

The *Crooks* decision provides a good example of how courts will examine fair use issues, but the decision itself provides little guidance to school districts as to acceptable copying practices because the facts alleged proved infringement.

Guidelines Developed

On April 3, 1979, Representative Kastenmeier, Chairman of the House subcommittee which handles copyright, appointed a negotiating team of users and producers of copyright materials to develop "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes."

On September 28, 1981 the negotiators presented the developed guidelines to the House subcommittee. On October 14, 1981 they appeared in the *Congressional Record*.⁴⁴ Chairman Kastenmeier commended the negotiators because the "guidelines reach an appropriate balance between the proprietary rights of copyright owners and the instructional needs of educational institutions."

The guidelines apply to nonprofit educational institutions, elementary and secondary education institutions, and higher education and public libraries. The guidelines permit copying of an entire work, which may be used more than once in a classroom during the first ten consecutive school days after transmission and allow a 45 calendar day retention period—all under specific conditions. (see Appendix VII).

Several questions arise as to the application of the guidelines:

- Does ten consecutive school days mean that a school can use the television program broadcast during a vacation period? Yes, provided the time does not extend beyond 45 calendar days.
- Are the guidelines law? No, they represent a universal industrywide standard endorsed by a congressional committee.
- What television programs are covered by these guidelines? All programs broadcast by commercial and non-commercial stations.

⁴⁴ 97 Cong. Rec. E4751 (daily ed. Oct. 14, 1981).

- Do the guidelines cover cable TV or radio? Not specifically, because those interests did not participate in the negotiations. However, the guidelines are precedent for the scope of fair use.

Other Uses of Video Cassette Recorders

Periodically school attorneys are asked by individuals in audiovisual departments as to permissible materials for showing on school video cassette recorders—particularly when so many movies are available for sale or lease within the community. While virtually all of these films contain a warning against anything other than home use, § 110(1) of the Act states that it is not an infringement to display a motion picture or other audiovisual work in the course of face-to-face teaching unless the copy used was not lawfully *made*, (emphasis added) and the person responsible for the performance knew or had reason to believe it was not lawfully made. Thus face-to-face classroom performance of a lawfully made video recording is permissible but *not* for entertainment purposes.

PHOTOCOPYING

Print Materials

The photocopying agreement was the first set of guidelines that received universal approval from the publishers, authors and the educational community (see Appendix V). It must be emphasized that the guidelines are intended to provide a "safe harbor" for users—not to define all possible practices that are fair use. In other words, these guidelines represent the minimum not maximum limits of fair use. All parties agreed that a grey area of greater permissible use exists but deemed it impossible to define. Since the guidelines were accepted as part of the legislative history of fair use,⁴⁵ some publishers have pressured individual profit making copyshops and a university to make the guidelines maximum not minimum permissible uses.

The guidelines indicate that a teacher can make or request to be made a single copy of a chapter, an article, a short story, a poem, a chart or a graph, etc. Furthermore, a teacher can make multiple copies for classroom use, provided the copying meets the tests of brevity, spontaneity, and cumulative effect.

Music

A similar minimum, not maximum, standard of fair use was developed for music. Emergency copying is permitted for imminent performances. Multiple copies of excerpts are permitted for classroom use. Limited recordings are permitted of student performances for purposes of evaluation. (see Appendix VI).

In a law suit brought against New York University, in an out of court settlement, the university agreed to the following:

- any professor could use the guidelines;
- in any instance not covered by the guidelines written permission of the copyright owner would be sought; and,
- where permission was denied or the terms of permission were unacceptable to the professor, the professor could ask for an opinion from the university attorney.

⁴⁵ H.R. Rep. No. 1476, 94th Cong., 2d Sess. 66 (1976).

The question many have asked: why were steps two and three not reversed, i.e., in instances of doubt shouldn't the professor seek the opinion of the school attorney first and then only in the cases where the attorney advises against copying, should the teacher ask permission from the copyright owner? Requesting permission first from the owner virtually negates the purpose of the fair use concept even where it is present.

COMPUTER SOFTWARE⁴⁶

As noted above, copyright law from its inception has struggled to keep pace with developing technology. Beginning in 1476, when William Caxton introduced the printing press in England, technology has rapidly produced products capable of duplicating copyrighted materials, thus stretching the canons of statutory law to new and seemingly endless limits. The impact of this new technology is not limited to the field of statutory law. Education has become one of the most profoundly affected professions. Technology has enhanced a virtual revolution in educational philosophy and in new approaches to learning.⁴⁷

Today's educator has available, a variety of electronic media for use in the instructional process. One such innovation is the microcomputer. A nationwide survey, conducted by the National School Boards Association, in consultation with the National Institute of Education, revealed that 96% of those school districts surveyed use microcomputers for instructional purposes. Concomitant with this increased usage of computers in education, is the increased growth of the educational software industry. Once a cottage industry, software sales now total in the billions of dollars.

This increased use of technology in support of the educational process is not without problems. These problems are both ethical and legal in nature. Teachers are now able to duplicate, with relative ease, most commercially available software for use in the classroom. As technology continues to create new modes of communication, the possibilities for educators to become involved in the illegal copying of software will multiply.⁴⁸

Historically, as discussed above, copyright law has been vague as to what constitutes infringement by educators. During efforts to revise the 1909 copyright law, Congress recognized the limitations of the pending 1976 Act in dealing with the computer issue. Legislation was introduced calling for the establishment of a National Commission on New Technological Uses of Copyrights Works (CONTU). CONTU's recommendations, with minor modifications, were signed into law by President Ford on December 12, 1980. This amendatory legislation added the following new language to § 101 of the 1976 Copyright Act:

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

Section 117 of the Act was amended to read as follows:

⁴⁶ This section regarding the copyright issues relating to computer software was authored by Robert E. Clark. Dr. Clark received his Doctor of Education from Virginia Polytechnic Institute and State University where he now teaches school law. His doctoral dissertation examined the legal implications of copyright law for the use of computer software in public education. Dr. Clark is also familiar with the practical aspects of public school operation, having served as a high school principal for ten years.

⁴⁷ "Education and the Copyright Law: Still An Open Issue," 46 *Fordham L. Rev.* 93 (1977).

⁴⁸ *Id.*

Notwithstanding the provisions of § 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

- (1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or,
- (2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only with the authorization of the copyright owner.⁴⁹

This statute provides some guidance to educators, relative to the duplication of copyrighted software, for use in the classroom.

Questions and Answers

1. A teacher loads a copyrighted program into a classroom terminal. This action creates a copy of the copyrighted material. Has the teacher infringed the program owner's copyright?

No. Congress recognized that, to use a computer program, one must create a copy of that program in the computer's RAM (Random Access Memory). Section 117, subsection (1), specifically authorizes such a copy as an "essential step in the utilization of the computer program in conjunction with a machine . . ."

2. A teacher buys a copyrighted software program. To insure that the program will not be lost due to student abuse, computer failure, or other mishaps, the teacher makes a "back-up" copy. Does this back-up copy infringe?

No. Back-up copies, referred to in the law as archival copies, are permitted. Certain statutory conditions are imposed on archival copies; they must be for archival purposes only and must be destroyed, should ownership of the original copyrighted program cease.

3. A teacher is using the original copyrighted program in one computer and the archival copy in another. Does this action constitute infringement?

Yes. Archival copies are permitted for back-up purposes only.

4. A teacher boots a copyrighted program into a computer terminal located in the office. Later in the day, the teacher boots the same program into a different terminal. Do these "multiple" copies infringe the copyright?

No. Most authorities in the field of copyright are of the opinion that this type of "serial" use does not constitute infringement. Infringing copies must be fixed in a tangible medium, i.e., the floppy disk. In our example above, copies are created in the computer's RAM, but are not fixed on a disk. The reader should note, however, that this line of reasoning has not been subjected to judicial scrutiny. Therefore, caution should be exercised.

5. A program is "downloaded" into multiple terminals, using a networking device. Is this practice acceptable?

⁴⁹ Public Law 96-517, 94 Stat. 3028-29 (dated December 12, 1980, amending Title 17, United States Code).

The state of the law is unclear. On one side an argument is made that the purpose for which software packages are made is to download. On the other side the argument is made that each download is the making of another copy. Time, the courts and the Congress will be the final determining factors.

6. An instructor discovers a program that has been declared to be in the "public domain." Multiple copies are made and used in the classroom. Has the instructor infringed the copyright?

No. Materials that have fallen into the "public domain" do not have copyright protection.

7. Computer software programs usually are sold with accompanying manuals and other written documentation. May a teacher freely copy this material for distribution to the students?

No. Written documentation is usually covered by a separate copyright. (See the section on printed materials above.)

8. Students ask for permission to use the school's computer equipment to duplicate copyrighted software which they own. Is this practice permissible?

No. To condone such illegal copying is considered contributory infringement. In such situations educators should not rely on the recent Supreme Court decision in the *Sony* case.⁵⁰ In this case, owners of Sony's Betamax VCRs were using the machine to tape televised, copyrighted programs. Producers of these programs claimed copyright infringement for manufacturing the recording device. The majority opinion held that Sony was not guilty. However, a minority opinion issued by the Court adhered to the belief that Sony did infringe.

9. A publisher expresses an interest in publishing a computer program, written by a member of the school's instructional staff. The publisher has offered a large sum of money for the program's copyright. Does the teacher own the program he/she composed; and, is he/she entitled to any monies paid for the copyright?

No. Section 201, subsection (b) "Works Made for Hire," states: "... the employer... is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright." (see, pp. 19, *infra*.)

Summary

Educators must tread lightly in this sensitive area. The Microcomputer Software Association, comprised of software developers and producers, has mounted a massive campaign aimed at professional pirating of copyrighted software. A Software Protection Fund has been created with an initial operating budget of half a million dollars.⁵¹

To minimize the risk of appearing in court to face a charge of copyright infringement, school systems should institute basic safeguards:

- each school district should adopt written rules and regulations regarding the use of copyrighted software;

⁵⁰ *Sony Corporation of America v. Universal City Studios, Inc.*, 104 S. Ct. 774 (1984).

⁵¹ Thorne D. Harris, "You Should Know What the Copyright Law Says", 5 *Classroom Computer Learning* 16 (Oct. 1984).

- teachers must be informed of the law and incorporate it into the instructional program;
- software should be stored in a secure area;
- students should not be permitted to utilize computer labs without proper supervision; and,
- school districts must budget appropriate funds to purchase multiple copies of needed software, thus reducing the temptation to make unauthorized copies. The use of multiple-use licensing contracts should be standard fare. Most publishers offer these contracts for a nominal fee, especially when compared to the possibility of defending the district in a court of law.

While technology has opened new educational horizons, the journey toward educational excellence is not without peril. Educators who know the copyright law and demonstrate a good faith effort to abide by its directives in the use of computer software should avoid costly legal sidetrips. Familiarity with copyright, not ignorance of the law, is an educator's best protection.

MADE FOR HIRE

As alluded to above, one of the basic principles of copyright law is that the copyright for works made for hire resides with the employer. The employer is considered the author unless there is an agreement that the employee will own the copyright. A work made for hire is defined as materials prepared by an employee within the scope of his or her employment, or in the case of education, it includes instructional texts, tests, answer sheets, etc., and materials specifically commissioned.⁵² Therefore the school system owns the copyright of all instructional materials produced by its teachers and administrative staff as well as all instructional materials it commissions to be done by others than its own staff. A school system should develop a policy that advises all employees of the school's ownership of any instructional materials produced. (see Appendix XIV).

ENFORCEMENT OF COPYRIGHT LAWS

Copyright Royalty Tribunal

The law creates a Copyright Royalty Tribunal.⁵³ Its function is to determine royalty rates in limited areas and the distribution of royalty fees. The only instance where this may affect education involves the compulsory license system for non-dramatic musical works intended for public broadcasting. Public broadcasts must pay for the use of these materials through voluntary negotiations with the copyright owner or through the Tribunal. Instructional broadcasts are exempt from the provision.⁵⁴

Other uses of the Tribunal include juke box compulsory licensing royalties and cable television compulsory licensing royalties.⁵⁵

Penalties for Infringement

Under the law, copyright infringement can result in (a) an injunction against further violation; (b) impoundment of the wrongfully copied materials; (c) ac-

⁵² 17 U.S.C. §§ 101, 201(b).

⁵³ 17 U.S.C. § 801(a).

⁵⁴ 43 FR. 25068-73.

⁵⁵ 43 FR. 40501-2 (jukebox); 43 FR. 24528-9 (cable television).

tual damages suffered by the plaintiff as well as profits of the infringer or statutory damages of not less than \$250 and not more than \$10,000 per infringement; (d) assessment of attorneys' fees; and (e) court costs.⁵⁶ With regard to damages the law treats education more kindly on the question of statutory damages. In certain instances, only actual damages, not statutory, can be assessed.⁵⁷

The House of Representatives report states:

In addition to the general "innocent infringer" provision, clause (2) deals with the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part. Section 504(c)(2) provides that, where such a person or institution infringes copyrighted material in the honest belief that what *they* were doing constituted fair use, the court is precluded from awarding any statutory damages. It is intended that, in cases involving this provision, the burden of proof with respect to the defendant's good faith should rest on the plaintiff.⁵⁸

In addition, willful violators who infringe for commercial advantage or private financial gain could be subject to criminal penalties. First offenders may be imprisoned for up to one year and fined up to \$25,000; subsequent offenses may carry a prison term of up to two years and a fine up to \$50,000.⁵⁹

Defenses to Infringement Actions

- Fair Use. While often referred to as a defense, it is now an exception to the owner's exclusion rights.
- Lack of Standing. Only the author or the assignee of copyright has standing. A licensee does not.
- Statute of Limitations. A criminal or civil action charging infringement must be brought within three years after the cause of action arose or the claim accrued.⁶⁰
- Laches. The delay must be prejudicial to the defendant. For example, if the plaintiff stood by while a supposed infringer spent money marketing a product, then the plaintiff filed suit after the marketing proved successful, the defendant could assert the laches defense.⁶¹
- Failure to prove ownership.
- Abandonment of copyright.
- Estoppel. Where the plaintiff induced, assisted, caused or otherwise was a party to the infringement, he may be estopped from claiming a copyright violation.
- Violation of anti-trust laws.
- Violation of first amendment rights.

⁵⁶ 17 U.S.C. §§ 502-505.

⁵⁷ *Id.* at § 504 (c)(1)(2).

⁵⁸ H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 163 (1976).

⁵⁹ 17 U.S.C. § 506.

⁶⁰ 17 U.S.C. § 507.

⁶¹ See *Haas v. Leo Feest*, 234 Fed. 105 (1916).

SCHOOL DISTRICT COMPLIANCE WITH COPYRIGHT LAWS

Develop Policies

- Know the scope of and use fully the rights of schools with regard to copyrighted materials.
- Using the guidelines found in this publication, develop board policies on
 - (1) library use;
 - (2) photocopying of printed materials;
 - (3) copying of music;
 - (4) off-air-taping of television programs; and
 - (5) computer software.
- Since fair use may exist beyond the guidelines, establish a procedure for legal counsel to review any use beyond the guidelines before seeking permission or license to use from the owner.
- Develop a policy and procedure for seeking permission for uses beyond fair use.
- Develop a policy on works for hire. Make sure materials owned by the school district are properly registered with the Copyright Office.
- Secure releases to use school photos, speeches or other inservice training presentation, etc. for all school purposes.
- Be especially careful when dealing with performances of dramatic works or when hiring a band to play at a school function where other than students will be attending.
- Keep accurate records of good intentions!

Beyond Fair Use: Obtain Permission and Licenses

What does a teacher, principal or superintendent do if the proposed use of copyrighted material is clearly an infringement and not one of the exceptions?

Either that person or someone in the school system itself must request permission to use the music, play, book, film, television program, etc. (see Appendix XII). The owner of the copyright can:

- grant permission to use the material without any royalty payment;
- grant permission under specific conditions such as paying a royalty; dictating the way credit is to be given, limiting the duration of permission, etc.; or
- refuse to grant permission under any circumstances.

There are companies who as a policy refuse to grant permission in the belief that holding their property off the market heightens its value in the future.

CONCLUSION

Having reviewed the basics of copyright law as applicable to schools, let's return to the nine examples that began this inquiry:

1. Closed circuit TV use of books for literature purposes with excerpts of books discussed. Closed circuit—not for public consumption. Excerpts—not using entire work. Nondramatic work. Clearly, fair use.
2. School newspaper and photographs. The private photographer does have the copyright to those class pictures. Permission to use for one purpose does not validate other uses. However, the school can require by contract terms release of the photos for all purposes as a condition to taking the class pictures.
3. Beach Boys concert. Performance of nondramatic work. However, the group is being paid for the performance of music, and the school will make a profit. The fact that the funds will be used for band uniforms is irrelevant. Clearly an infringement. Have your own school band play instead.
4. Football coach and homecoming game. Because the country music star will not be paid for the nondramatic performance, the use is clearly permissible.
5. Science teacher and "Nova." A video tape for use tomorrow falls well within the ten school days rule. Clearly permissible, but remember to erase the tape.
6. The cable franchise. Infringement!!
7. The talking books program. A specific exemption in the law covers this type of use. Section 110(8).
8. The swing band will be making a nondramatic performance. This is permissible even though a fee is charged and competes with the national rock group.
9. The economics teacher and the bar graph. Information/data cannot be copyrighted, only the visual presentation. The teacher can put the graph in his book.

APPENDICES

APPENDIX I

QUESTIONS AND ANSWERS

PHOTOCOPYING

1. What are the exclusive rights of the copyright owner under the Copyright Act?

Section 106 of the law (see Appendix II) gives the copyright owner the exclusive rights to:

- a. *Reproduce the work* (make copies or phonorecords of the work);
 - b. *Prepare derivative works* based upon the copyrighted work (make abstracts, arrangements, condensations);
 - c. *Distribute copies or phonorecords* of the copyrighted work to the public (by sale, rental, lease, or lending);
 - d. *Perform the copyrighted work publicly* (as in musical, literary, dramatic works, motion pictures, audiovisual works);
 - e. *Display the copyrighted work publicly* (as in literary, musical, dramatic and choreographic works, graphics, sculptural works, individual images or slides from a motion picture or other audiovisual work).
2. What does fair use mean?

Fair use means the legal right to copy or reproduce a limited amount of copyrighted material without the consent of the author and without payment of royalty provided the use is reasonable and not unduly harmful to the copyright owner.

The 1976 Copyright Act by codifying fair use in § 107 translates the doctrine into a reasonably reliable and certain guide for educators in their use of materials. The Act now explicitly recognizes that fair use includes making copies or phonorecords of works "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research."

3. Does fair use apply to all materials?

The fair use provision of § 107 of the Act applies to *all* copyrighted works but applies in varying degrees depending on the type of material. Fair use applies broadly to materials such as excerpts from books, periodicals, newspapers and other print materials, largely because proprietors and users have agreed on guidelines governing fair usage of print materials. Fair use applies in a more limited manner to films, graphics, audiovisual materials, and off-the-air taping of television programs. With the exception of off-air taping, proprietors and users have not agreed to guidelines setting the parameters

of fair use in the area of films and audiovisual materials. Music guidelines, as well as guidelines for copying by libraries, have also been agreed upon, thus making fair use applications more clear cut in these areas.

4. What user groups are covered by the fair use provision?

Teachers, scholars, researchers, journalists, librarians, students and users of libraries may take advantage of the fair use provision. The conference report accompanying the Act confirms that the concept of teacher in the guidelines should be defined broadly, and includes "instructional specialists working in consultation with actual instructors." This would include instructional media specialists. Fair use is a safety valve which allows instructors, scholars and researchers and librarians to use materials in the public interest as they carry out their responsibility for educating all citizens.

5. What are the guidelines that spell out the applications and dimensions of fair use to print and other materials?

Even though the Copyright Act established four statutory criteria to be used in determining whether a given use of a work is a fair use, it remains an uncertain proposition. Copying rules vary with the use that is to be made of the copy. Is the copy for student use? Is it for teacher use? Are multiple copies to be made for classroom use? Librarians and teachers needed some minimum certainty as to what can be copied. Therefore, negotiations were conducted between the Ad Hoc Committee of Educational Organizations on Copyright Law Revision and the Association of American Publishers and the Authors League of America. The result was an *Agreement on Guidelines for Classrooms Copying in Not-for-Profit Educational Institutions*, which the Congress accepted as "a reasonable interpretation of the minimum standards for fair use." (see Appendix V)

There is also a parallel set of *Guidelines for Educational Use of Music* (Appendix VI) and guidelines on interlibrary lending officially called "Guidelines for the Proviso of Subsection 108 (g)(2)." (Appendix VIII). All the guidelines emphasize three key words in ascertaining fair use in any given situation: *spontaneity*, *brevity* and *cumulative effect*. The most important of these is spontaneity. Again, it is important to recognize that the same general standards of fair use apply to all kinds of uses of copyrighted materials, although the relative weight to be given them will differ from case to case.

6. Are the guidelines considered a part of the Act? Do they have the force of law?

Although the guidelines are not written into the Act itself, they are included in the congressional reports accompanying the Act. As such, they became part of the legislative history of the Copyright Act which the courts will use in interpreting the provisions of the law.

In its report on the Copyright Act, the House Judiciary Committee commented as follows on the guidelines:

"The Committee believes the guidelines are a reasonable interpretation of the minimum standards of fair use. Teachers will know that copying within the guidelines is fair use. Thus, the guidelines serve the purpose of filling the need for greater certainty and protection for teachers." (House Report 94-1476, p. 72)

7. Do the guidelines give practical advice to teachers/school board members/administrators on the extent to which materials may be produced?

The guidelines designed primarily for teachers, media specialists and librarians deal largely with classroom copying and in-school uses of materials. Administrators and school board members have the responsibility of insuring that school personnel know what is permitted and what is not permitted under the law. The guidelines give practical advice and provide a straightforward easy-to-understand way of determining the extent to which a given work, or portion of a work, may be copied for teaching purposes. They enumerate safe *minimum* standards for fair use by teachers.

The guidelines establish three levels of fair use:

1. mandatorily permitted fair use;
2. borderline practices which may or may not be fair use, depending on the circumstances and which must be decided on a case-by-case basis; and
3. instances which definitely exceed fair use. These uses are clearly unauthorized and require permission and payment of royalty fees.

In level two cases it is possible to exceed the use permitted by the guidelines and still be protected by the fair use doctrine, but such uses are uncertain and controversial. To be absolutely safe it is wise to stay within the safe harbor of the guidelines which uses are mandatorily permitted. The problem is distinguishing between fair uses that exceed the guidelines and non-fair uses. At the very least, however, the guidelines do provide a large degree of certainty for teachers, librarians, researchers and students.

8. The guidelines specify that: "The copying of the material [must be] for only one course in the school in which the copies are made." This seems to imply that if one teacher in a school makes multiple copies of a work, no other teacher of that same course may do so. Is this correct?

No. In a large high school, for example, it would be impossible for any one teacher to know what works had been copied by other teachers, particularly if the school had a hundred or more teachers. The guidelines were agreed upon in order to avoid any such uncertainty. A teacher, however, should not take advantage of this privilege by making over-runs for another teacher who is teaching the same course. The copying must be done by the individual teacher or for a teacher at his/her individual request for his/her own use in teaching. The teacher is permitted to make copies (not to exceed one per student) for each of the sections he/she teaches of that course. In making multiple copies the teacher must of course be acting under his/her own volition and the copying done adhere to the length and spontaneity standards prescribed in the guidelines.

9. What is meant by the statement in the guidelines that: "Copying shall not be directed by higher authority"?

Under the guidelines the course of study or curriculum guide for a given grade level may not mandate that a teacher use certain duplicated materials at a given time in her/his grade level or course unless the supervisor or cur-

riculum department of the school has obtained permission in advance. The assumption is that the person who wrote the curriculum guide or course of study has time to obtain permission and pay the royalties in advance before the guides or courses of study are printed. Since curriculum guides are usually written a year in advance of their use, the use would not be a "spontaneous" use and would not qualify.

10. Is it permissible for a teacher to reproduce a page of synonyms and antonyms from a workbook for each student in the class?

No. The guidelines consider workbooks, standardized tests and test booklets as consumable materials; hence, they cannot be reproduced in whole or in part. The rationale for this prohibition is clear. Photocopying is frequently more expensive than purchasing original materials from the publisher. This is especially true with consumable materials.

11. A high school music teacher composes a new arrangement of a popular song and duplicates copies for an auditorium sing. Permitted?

No. The music guidelines state: "Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist." In this instance, the fundamental character of the work has been altered so this would not be permitted.

12. Increasingly, a substantial number of books contain notice and claims language to the following effect:

"No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopy, recording or by any information storage and retrieval system without permission in writing from the publisher."

Does this mean that fair use does not apply to such works?

No. In fact, language of this kind directly conflicts with the fair use provisions of § 107 of the Copyright Act. Such a notice is false and misleading because it claims that under no circumstances may a user photocopy or otherwise use even a single word. It fails to indicate that the copyright owner's claim of exclusive right is limited by the user's statutory right of fair use. In *Tiffany v. R.H. White Co.*, 190 U.S. 260, 264 (1903), the Supreme Court said:

"In determining whether a notice of copyright is misleading we are not bound to look beyond the face of the notice, and inquire whether under the facts of the particular case, it is reasonable to suppose an intelligent person could actually have been misled."

13. Does the Copyright Act grant to libraries certain rights of reproduction not granted to teachers or other educational users?

The doctrine of fair use applies to libraries and librarians as well as to teachers. The same guidelines on classroom copying of books and periodicals apply to libraries. In addition, however, § 108 of the Act authorizes certain other types of library copying that may not be fair use. The additional types of library copying authorized in § 108 in no way limit the library's fair use rights. In general, § 108 authorizes under certain circumstances the making of a sin-

gle copy of an entire work, and under other circumstances the making of a single copy of an article or small excerpt for a library user. (see Appendix III)

14. Is it permissible for a teacher to reproduce for student use copyrighted materials and place them on reserve in the school library?

No. Permission must be sought unless the materials copied are excerpts only, since in most instances the teacher would have had time to request permission in advance. In the unusual case where the need arises on the spur of the moment in the classroom and the material meets the other requirements of brevity and cumulative effect set forth in the guidelines on books and periodicals, then this might be permitted.

15. Is the student, principal, superintendent or school board liable if a student makes illegal copying on the school library's coin-operated photocopy machine?

The school personnel would not be liable if the library's coin-operated photocopy machine were unsupervised and if each photocopy machine displayed a notice that the making of a copy is subject to the copyright law. The student however would be liable if he/she exceeded the rules governing fair use.

16. To provide students with essential additional structure drills as an integral part of the language learning process, the teacher takes examples of sentences and parts of grammar drills from many sources and dittoes or otherwise reproduces them on tests. Is this permitted?

If the examples are from many different sources rather than from just one and if no example is from a workbook, test manual or other consumable material, this practice would likely be considered a fair use. At best, this is a borderline situation.

17. Is it permissible for a teacher to duplicate for each student in his science class five pages from a government publication on ecology?

Works produced for the U.S. Government by its officers and employees are not subject to copyright. If the government publication in question is printed by the Government Printing Office, the teacher has the right to duplicate the pages for his class. If, however, the works were prepared under government contract or grant, another party may hold the copyright. Both House and Senate Judiciary Committee reports on the copyright bill state:

"There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions."

The educational community has long maintained that information that has been prepared with public funds should be in the public domain. However, the public policy of the U.S. Department of Education would allow private copyrighting of publicly-financed materials. The rationale for this policy is that commercial publishers have a more effective distribution system than the U.S. Government Printing Office which is overloaded and unable to get materials printed and dispatched for ready and rapid distribution.

18. How does one copyright a work?

The procedure for copyrighting a work is as follows:

1. Obtain an application form for copyright from the Copyright Office, Library of Congress, Washington, D.C. 20559. Be sure to specify the type of the work you are seeking to have copyrighted, in order to receive the proper form, i.e., whether the work is a novel, poem, film, musical composition, tape recording, etc., (see Appendix XI).
2. Put the copyright notice on the verso of the title page or in a reasonably visible location. The notice must include the words *copyright* or the symbol C, followed by your name and the date.
3. Send two copies of your work with the appropriate fee and the application form to the U.S. Register of Copyrights at the above address.

Registration of the copyright is not mandatory but is a condition for obtaining certain remedies for copyright infringement.

OTHER THAN PHOTOCOPYING

1. Does fair use apply to non-print materials as well as to print materials?

In House Report 94-1476, Congress has written:

"The concentrated attention given the fair use provision in the context of classroom teaching activities should not obscure its application in other areas. It must be emphasized again that the same general standards of fair use are applicable to all kinds of uses of copyrighted material, although the relative weight to be given them will differ from case to case."

The House Report then gives the following illustration of how fair use would vary from case to case:

"The fair use doctrine would be relevant to the use of excerpts from copyrighted works in educational broadcasting activities not exempted under section 110(2) or 112, and not covered by the licensing provisions of section 118. In these cases the factors to be weighed in applying the criteria of this section would include whether the performers, producers, directors and others responsible for the broadcast were paid, the size and nature of the audience, the size and number of excerpts taken and, in the case of recordings made for broadcast, the number of copies reproduced and the extent of their reuse and exchange. The availability of the fair use doctrine to educational broadcasters would be narrowly circumscribed in the case of motion pictures and other audiovisual works, but under appropriate circumstances it could apply to the nonsequential performance of a small excerpt from a motion picture for criticism or comment."

Likewise, if the copying and recording of a work were done for commercial purposes then there would be little fair use; however, if the copying and re-

ording were done for non-commercial instructional/educational use, then there would be a greater degree of fair use. The extent to which fair use may apply in any given instance of copying or taping would depend upon the use made of the copy or tape—whether the work is being copied or recorded for teaching, scholarship or research purposes—and whether the copying meets the standards of brevity, spontaneity and cumulative effect, as well as the economic impact of the use on the marketability of the work.

2. May a copyrighted television program—recorded off-the-air at school or in one's own home—be used in the classroom or in another non-profit situation?

The guidelines provide that "a broadcast program may be *recorded off-air simultaneously with broadcast transmission* (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period of not to exceed the first forty-five (45) consecutive calendar days after date or recording." (emphasis added.) The only time a program which is aired during after-school or evening hours can be "recorded off-air simultaneously with broadcast transmission or cable re-transmission", as specified in the guidelines, would be at school (during school hours) or in one's own home (after-school or at night). The guidelines also provide that "off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests." Accordingly, if the teacher does the recording at school or at home or requests the educational media center to make the recording for him/her, then the use is permissible. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge. Fair use would not apply; therefore, to the recording of Home Box Office programs on cable television.

3. Does the 45-day retention period mean that several teachers of the same subject may use the recording in their classes during that 45-day period?

No. The 45-day retention period has two purposes: (1) to enable teachers to use the program one time with each of their classes and repeat the showing one time if needed for reinforcement or review in classes "and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction" during the first ten consecutive school days in the 45-day calendar retention period; (2) to enable teachers to preview the program and test it with their classes before purchase, license or rental of the program to determine whether the program meets the instructional objectives of the teacher and students. *Actual showings in the classroom must be accomplished within the first ten consecutive school days.* The second purpose above can be accomplished within the 45 calendar day period. The guidelines permit the teacher or media specialist to make a limited number of copies from each off-air recording to meet the instructional needs of other teachers in the building, but all showings must be given during the first ten-day period of the 45-day retention period. Each of the copies recorded during that period must be erased after the 45-day retention period has elapsed. "School days" in the guidelines are defined as school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the 45 calendar day retention period.

4. Must a television program recorded off the air be used in its entirety in the classroom or may excerpts be made of the program?

Off-air recordings of television programs may be used in their entirety if classroom time permits; otherwise, excerpts of the program may be shown to the class. Most classroom periods last 45 or 50 minutes so that showing an entire television program may be impossible. The guidelines permit excerpts to be shown provided the recorded program is not altered from its original content. If excerpts are used, every effort must be made to maintain the integrity of the program.

5. If a school media center or school library has purchased a 16mm. film for its collection, is it permissible for the media center or library to make a videocassette of the film for circulation to teachers?

No. This would definitely be an infringement of copyright. In an era of tight budgets this alternative sounds appealing, but it is not permissible. By purchasing a film the school has not also bought the rights to make a copy. Fair use, however, may allow the copying of a small number of single frames or short segments. Making a videocassette of a film would deprive the producer of a sale and thereby violate the fourth criteria for determining fair use.

6. Is it legal for a school district to show on public broadcasting or closed-circuit television 16mm. films in its library to schools within the school district?

No. Prior clearance and royalty payment are required if an entire commercially produced film is shown on either public broadcasting or closed-circuit television. One exception to this requirement exists for a closed-circuit television system that is *confined to one building*. If the system operates between schools in the district, then this would not be permitted. When the transmission is confined to one building, the situation would be comparable to showing a film on a motion picture projector within the school which is considered a face-to-face teaching activity.

7. A school media center shows on closed-circuit television a preview of new films it is considering for purchase in order to obtain the widest possible evaluation from teachers. Is this permitted?

Yes. This likely would be permitted as an exemption under § 110 of the Act. Section 110(2)(C)(iii) reads:

"Notwithstanding the provisions of section 106, the following are not infringements of copyright:

- (2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if
 - (C) the transmission is made primarily for—
 - (iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;"

The House Report describes such transmission as in-service training; hence, the transmission could still be exempt even though it is capable of reception by the public at large. One other factor, however, must also be considered. The transmission must also be permitted under any contract that may exist between the media center and the film producer.

8. School libraries/media centers regularly execute contracts with film or television producers when they obtain or purchase films for their schools and libraries. What effect does the Copyright Act have on these contracts?

None. The Copyright Act does not invalidate contractual arrangements between schools and publishers or producers of instructional materials purchased for school use. The contract, when signed by the proper school authority, in effect sets aside the copyright law in favor of the contract provisions which govern the way the film, television program or other work, is to be used by the school. In view of this, school media specialists and librarians must be sensitive to the conditions under which they purchase materials and review contracts very carefully before executing the agreement.

9. In an art course, students are preparing a slide tape presentation showing illustration of various styles of architecture through the ages. If successful, the program will be shown to the entire student body in the auditorium. As background music, the students have decided to tape selections of music of various periods from records which the school library owns. Is this permitted?

This would be permissible provided that the copy is used for this class project only and not sold or performed for profit. If admission is charged, this would not be permitted. The Copyright Act allows the school library to make, or the student may make, under certain circumstances, for the student's educational use, a single copy of a portion of a sound recording (tape, disc, cassette). It is important to keep in mind the amount to be copied in relation to the work as a whole. Thus, one selection from each record, rather than several songs from the same record, would likely be permitted, but continuous playing of one selection throughout would not be a fair use.

10. On the night of performance of the school orchestra at a concert, one of the students fails to bring his musical score with him to the concert. Would it be permissible for the music teacher to reproduce a copy for him on the school's Xerox machine?

Yes, this would be permitted. *The Guidelines for Educational Uses of Music* list as one of the "permissible uses":

"Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course."

11. A high school orchestra tapes its performance at rehearsal for student evaluation purposes. Is this permissible?

Yes. This is clearly permitted under the music guidelines. The guidelines read:

"A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher."

If, however, a copy of the recording was made for each member of the orchestra to take home, this would be an infringement.

12. In a study about wildflowers in the Southwest, a teacher makes several transparency lifts from the magazine *Texas Parks and Wildlife* showing pictures of the various wildflowers seen along Texas highways. Is this permissible?

A single copy of a picture from a book, periodical, or newspaper may be made by or for a teacher, at his or her individual request, for his or her scholarly use or use in teaching or preparation to teach a class. If any individual picture is copyrighted, it may not be copied without permission. If the periodical containing the pictures is copyrighted but the individual pictures in the periodical are not, fair use will apply and may allow the reproduction of a small number of pictures from the periodical, provided the number reproduced is small in relation to the whole.

13. Do the same guidelines covering off-air taping of television programs also apply to the taping of radio programs off-the-air for classroom use?

No. The off-air guidelines apply only to off-air recording, retention and use of *television* broadcast programs for educational purposes by non-profit educational institutions. National Public Radio has a policy which permits schools to tape its programs off-the-air for use in schools. These tapes may be retained for an indefinite period, so long as they are used solely for educational/ instructional purposes.

In the case of commercial radio programs, a student may make a single copy of a portion of a copyrighted program for educational purposes in connection with a presentation he/she is preparing for class. In general, it is important to keep in mind the amount to be copied in relation to the whole (e.g., taping a small portion of a program) and the intended use of the tape. One would not be permitted to sell such a tape or allow it to be performed for profit.

14. What special considerations, if any, does the Copyright Act give to public broadcasting? May educators include copyrighted works on instructional television and radio broadcasts without clearance or permission?

The Copyright Act contains a number of provisions affecting public broadcasting. These provisions are grouped into two categories—instructional programs primarily for school use and more generalized programs for home audiences. In each of these categories the rules differ depending on the type of program materials being used—i.e., films, records, music, literature, pictures, etc.

Instructional broadcasting

With certain limitations, instructional broadcasting enjoys the same exemptions as does face-to-face teaching. Section 110(2) provides an explicit exemption for the inclusion of *nondramatic works* in public television and radio programs. This exemption would cover books and poetry, magazines and newspapers, photographs and illustrations, slides, film strips, paintings and sculpture, classical and popular music. The exemption does not cover *dramatic works*, such as operas and ballets, plays, motion pictures, audiovisual works, television and radio programs, whether commercial or non-commercial.

To be deemed "instructional" a program must meet the following tests:

1. The program must be developed as a regular part of the systematic instructional activities of a governmental body or nonprofit institution.
2. The use of a copyrighted work must be directly related and of material assistance to the teaching content of the program.
3. The program must be made primarily for reception in classrooms, or similar places devoted to instruction or where special circumstances prevent students attending in such places.

Fair use applies to all copyrighted works included in all instructional public television and radio programs—dramatic as well as nondramatic. Typical examples would be: excerpts from books read or music played in the course of criticism, commentary or analysis; short clips from feature films; individual slides from filmstrips or single frames from motion pictures.

General audience programming

Non-instructional programming on public broadcasting is covered in § 118 of the Act. This section sets up a mechanism for obtaining access to nondramatic works that § 110(2) does not cover in order that public broadcasters will not have to negotiate individually with producers. This section encourages voluntary agreements between public broadcasters and music licensing agencies, photographers and illustrators on setting royalty rates for such uses. Section 118 authorizes the Copyright Royalty Tribunal to set rates whenever agreements between these parties cannot be reached. Examples of programs which would fall into this category would be *Sesame Street*, *Electric Company* and *Mr. Roger's Neighborhood*. These programs do not meet the requirements for "instructional" programs set forth in § 110(2). They are made primarily for general audience enrichment.

15. With the widespread use of video recorders in schools, teachers are now able to record instructional television programs off-air for replay later at times convenient to their classroom schedules. Have film producers/distributors established any policies governing the re-recording of their programs for classroom use?

Yes. Off-air taping of programs produced by four agencies, who are the primary producers/distributors of instructional programs for schools, is permissible for classroom use in nonprofit educational institutions, under certain circumstances. The agencies are: Agency for Instructional Television, Great Plains National Instructional Television Library, Public Broadcasting Service and Public Television Library. These agencies have issued a joint statement of policy regarding school rerecordings of their programs. The conditions under which their programs may be taped are as follows:

- a. School rerecordings may be made only by student, teachers and faculty or staff members in an accredited non-profit educational institution;
- b. School rerecordings will be used solely for classroom, auditorium or laboratory exhibition in the course of classroom instruction or related educational activities;

- c. School rerecordings will be used only in the educational institution for which made, and will not be given away, loaned or otherwise made available outside that educational institution;
 - d. School rerecordings will be used only during the seven day period of local ETV and other educational broadcasts licensed by the distribution agency; and will be erased or destroyed immediately at the end of that seven day period except to the extent specifically authorized in writing in advance by the distribution agency.
16. Under the Copyright Act are computer programs copyrightable. If so, under what circumstances may the programs be copied?

Yes, computer programs are copyrightable. Section 117 of the Copyright Act makes little reference to computer programs other than to declare a moratorium until the National Commission on New Technological Uses of Copyrighted Works (CONTU) concluded its work and reported to Congress. The CONTU report submitted to Congress on July 31, 1978 recommended that "the new copyright law should be amended to make it explicit that computer programs, to the extent that they embody an author's original creation, are proper subject matter of copyright." Accordingly, Congress—in an amendment to the U.S. Patent Law, PL. 96-517—amended § 117 of the Copyright Act. The amendment, signed into law on December 12, 1980, states that "it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

- (1) that such a new copy or adaptation is created as an essential step in utilization of the computer program in conjunction with a machine and that it is used in no other manner; or
- (2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

APPENDIX II

The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. (U.S. Const. Art. I, § 8)

APPENDIX III
TITLE 17
UNITED STATES CODE
COPYRIGHTS

CHAPTER 1—SUBJECT MATTER AND
SCOPE OF COPYRIGHT

Sec.

- 101. Definitions.
- 102. Subject matter of copyright: In general.
- 103. Subject matter of copyright: Compilations and derivative works.
- 104. Subject matter of copyright: National origin.
- 105. Subject matter of copyright: United States Government works.
- 106. Exclusive rights in copyrighted works.
- 107. Limitations on exclusive rights: Fair use.
- 108. Limitations on exclusive rights: Reproduction by libraries and archives.
- 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord.
- 110. Limitations on exclusive rights: Exemption of certain performances and displays.
- 111. Limitations on exclusive rights: Secondary transmissions.
- 112. Limitations on exclusive rights: Ephemeral recordings.
- 113. Scope of exclusive rights in pictorial, graphic, and sculptural works.
- 114. Scope of exclusive rights in sound recordings.
- 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords.
- 116. Scope of exclusive rights in nondramatic musical works: Public performances by means of coin-operated phonorecord players.
- 117. Scope of exclusive rights: Use in conjunction with computers and similar information systems.
- 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting.

§ 101. Definitions

As used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such

as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

"Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work".

A "device", "machine", or "process" is one now known or later developed.

To "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed"

for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

The terms "including" and "such as" are illustrative and not limitative.

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cassettes, in which they are embodied.

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

"Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictitious name.

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means—

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".

The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

A "work of the United State Government" is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A "work made for hire" is —

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall

be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

§ 102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works; and
- (7) sound recordings.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

§ 103. Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

§ 104. Subject matter copyright: National origin

(a) *Unpublished Works*.—The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) *Published Works*.—The works specified by sections 102 and 103, when published, are subject to protection under this title if—

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention; or

(3) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(4) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

§ 105. Subject matter of copyright: United States Government works

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies of phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if—

- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
- (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
- (3) the reproduction or distribution of the work includes a notice of copyright.

(b) The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

(c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his

or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair¹ price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section—

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

¹ So in original. Probably should read "fair".

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic, or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

(i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, books and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

(b)(1) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording and in the musical works embodied therein, the owner of a particular phonorecord may not, for purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution.

(2) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, "antitrust laws" has the meaning given that term in the first section of the Clayton Act and includes section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

(3) Any person who distributes a phonorecord in violation of clause (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.

(c) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

(d) The privileges prescribed by subsections (a) and (b) do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise without acquiring ownership of it.

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if—

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for—

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions;

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

(A) a direct charge is made to see or hear the transmission; or

(B) the transmission thus received is further transmitted to the public;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of:

(i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293-73.295 and 73.593-73.595); or (iv) a cable system (as defined in section 111(f)).

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8)(iii), *Provided*, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization.

(10) notwithstanding paragraph (4) above, the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a non-profit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) *Certain Secondary Transmissions Exempted.*—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if—

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) The secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) The secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions; or

(4) the secondary transmission is not made by a cable system but is made by a governmental body or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) *Secondary Transmission of Primary Transmission to Controlled Group.* — Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: *Provided*, however, That such secondary transmission is not actionable as an act of infringement if —

(1) the primary transmission is made by a broadcast station licensed by the Federal Communications Commission; and

(2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

(c) *Secondary Transmissions by Cable Systems.* —

(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection, secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not recorded the notice specified by subsection (d) and deposited the statement of account and royalty fee required by subsection (d).

(3) Notwithstanding the provisions of clause (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: *Provided*, That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmissions: *And provided further*, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) *Compulsory License for Secondary Transmissions by Cable Systems.*—

(1) For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall, at least one month before the date of the commencement of operations of the cable system or within one hundred and eighty days after the enactment of this Act, whichever is later, and thereafter within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system, and thereafter, from time to time, such

further information as the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation to carry out the purpose of this clause.

(2) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe by regulation. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) except in the case of a cable system whose royalty is specified in subclause (C) or (D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);

(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

(v) in computing the amounts payable under paragraph (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service area of a primary transmitter,

gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter; and

(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total \$80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which \$80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$80,000 but less than \$160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to \$80,000; and (ii) 1 per centum of any gross receipts in excess of \$80,000 but less than \$160,000, regardless of the number of distant signal equivalents, if any.

(3) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (2) of this subsection.

(4) The royalty fees thus deposited shall, in accordance with the procedures provided by clause (5), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (2)(A); and

(C) any such owner whose work was included in nonnetwork programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(5) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a

claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(e) Nonsimultaneous Secondary Transmissions by Cable Systems.—

(1) Notwithstanding those provisions of the second paragraph of subsection (f) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by section 502 through 506 and sections 509 and 510, unless—

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; and

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system, (ii) prevents unauthorized duplication while in possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility; (iii) takes adequate precautions to prevent duplication while the tape is being transported, and (iv) subject to clause (2), erases or destroys, or causes the erasure or destruction of, the videotape; and

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting (i) to the steps and precautions taken to prevent duplication of the videotape and (ii) subject to clause (2), to the erasure or destruction of all videotapes made or used during such quarter; and

(E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to clause (2)(C), to be placed in a file, open to public

inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously; except that this subclause shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, except that, pursuant to a written, non-profit contract providing for the equitable sharing of the costs of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with clause (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, to another cable system in any of those three territories, if—

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); and

(B) the cable system to which the videotape is transferred complies with clause (1)(A), (B), (C)(i), (iii), and (iv), and (D) through (F); and

(C) such system provides a copy of the affidavit required to be made in accordance with clause (1)(D) to each cable system making a previous nonsimultaneous transmission of the same videotape.

(3) This subsection shall not be construed to supersede the exclusivity protection provisions of any existing agreement, or any such agreement hereafter entered into, between a cable system and a television broadcast station in the area in which the cable system is located, or a network with which such station is affiliated.

(4) As used in this subsection, the term "videotape", and each of its variant forms, means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) *Definitions.*—As used in this section, the following terms and their variant forms mean the following:

A "primary transmission" is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a "cable system" not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: *Provided, however*, That a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(2), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

The "local service area of a primary transmitter" in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. The "local service area of a primary transmitter", in the case of a radio broadcast station, comprises the primary service area of such station pursuant to the rules and regulations of the Federal Communications Commission.

A "distant signal equivalent" is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station for the nonnetwork programming so carried pursuant to the rules, regulations, and authorizations of the Federal Communications Commission. The foregoing values for independent, network, and noncommercial educational stations are subject, however, to the following exceptions and limitations. Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of this Act permit a cable system, at its election, to effect such deletion and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be as-

signed for the substituted or additional program; where all rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year. In the case of a station carried pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth above, as the case may be, shall be multiplied by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

A "network station" is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

An "independent station" is a commercial television broadcast station other than a network station.

A "noncommercial educational station" is a television station that is a noncommercial educational broadcast station as defined in section 397 of title 47.

§ 112. Limitations on exclusive rights: Ephemeral recordings

(a) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(1) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(2) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(3) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to

transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8) to make no more than ten copies or phonorecords embodying the performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), if—

(1) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), and no further copies or phonorecords are reproduced from it; and

(2) any such copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security; and

(3) the governmental body or nonprofit organization permitting any use of any such copy or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

(e) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title

except with the express consent of the owners of copyright in the preexisting works employed in the program.

§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

§ 114. Scope of exclusive rights in sound recordings

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), and (3) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords, or of copies of motion pictures and other audiovisual works, that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, representatives of the broadcast-

ing, recording, motion picture, entertainment industries, and arts organizations, representatives of organized labor and performers of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.

**§ 115. Scope of exclusive rights in nondramatic musical works:
Compulsory license for making and distributing phonorecords**

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) Availability and Scope of Compulsory License.—

(1) When phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work. A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use. A person may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless: (i) such sound recording was fixed lawfully; and (ii) the making of the phonorecords was authorized by the owner of the copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) Notice of Intention to Obtain Compulsory License.—

(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(2) Failure to serve or file the notice required by clause (1) forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(c) *Royalty Payable under Compulsory License.*—

(1) To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work under subsection (a)(1) to distribute or authorize distribution of such phonorecord by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.

(4) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

(5) If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within

thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

§ 116. Scope of exclusive rights in nondramatic musical works: Public performances by means of coinoperated phonorecord players

(a) *Limitation on Exclusive Right.*—In the case of a nondramatic musical work embodied in a phonorecord, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless—

(A) such proprietor is the operator of the phonorecord player; or

(B) such proprietor refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by clause (1)(C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

(b) *Recordation of Coin-Operated Phonorecord Player; Affixation of Certificate, and Royalty Payable under Compulsory License.*—

(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of \$8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be \$4.

(B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

(2) Failure to file the application, to affix the certificate, or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(c) *Distribution of Royalties.*—

(1) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on an annual basis, a detailed statement of account covering all fees received for the relevant period provided by subsection (b).

(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 810 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws, for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(3) After the first day of October of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1). If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If it finds that such a controversy exists, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(4) The fees to be distributed shall be divided as follows:

(A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement.

(B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove entitlement.

(C) during the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(5) The Copyright Royalty Tribunal shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operators or proprietors of establishments in which phonorecord players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he or she has been denied the access permitted under the regulations prescribed by the Copyright Royalty Tribunal may bring an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.

(d) *Criminal Penalties.*—Any person who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or who knowingly alters a certificate issued under clause (1)(B) of subsection (b) or knowingly affixes such certificate to a phonorecord player other than the one it covers, shall be fined not more than \$2,500.

(e) *Definitions.*—As used in this section, the following terms and their variant forms mean the following:

(1) A "coin-operated phonorecord player" is a machine or device that—

(A) is employed solely for the performance of non-dramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An "operator" is any person who, alone or jointly with others:

(A) owns a coin-operated phonorecord player; or

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(3) A "performing rights society" is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

§ 117. Limitations on exclusive rights: Computer programs

Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results. Notwithstanding any provision of the anti-trust laws, any owners of copyright in works specified by this subsection and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may, within one hundred and twenty days after publication of the notice specified in this subsection, submit to the Copyright Royalty Tribunal proposed licenses covering such activities with respect to such works. The Copyright Royalty Tribunal shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Copyright Royalty Tribunal shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Tribunal: *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal. In establishing such rates and terms the Copyright Royalty Tribunal may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in clause (2) of this subsection. The Copyright Royalty Tribunal shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(4) With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1982, and at five-year intervals thereafter, in accordance with regulations that the Copyright Royalty Tribunal shall prescribe.

(d) Subject to the transitional provisions of subsection (b)(4), and to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Tribunal under subsection (b)(3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in clause (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in clause (1), and the performance or display of the contents of such program under the conditions specified by clause (1) of subsection 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in clause (1), and are destroyed before or at the end of such period. No person supplying, in accordance with clause (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this clause shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the requirement for such destruction pursuant to this clause: *And provided further*, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(e) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b).

(1) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.

(2) On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

(f) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(g) As used in this section, the term "public broadcasting entity" means a non-commercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in clause (2) of subsection (d).

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.

- 501. Infringement of copyright.
- 502. Remedies for infringement: Injunctions.
- 503. Remedies for infringement: Impounding and disposition of infringing articles.
- 504. Remedies for infringement: Damage and profits.
- 505. Remedies for infringement: Costs and attorney's fees.
- 506. Criminal offenses.
- 507. Limitations on actions.
- 508. Notification of filing and determination of actions.
- 509. Seizure and forfeiture.
- 510. Remedies for alteration of programming by cable systems.

§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright.

(b) The legal and beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of sections 205 (d) and 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

§ 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be en-

forceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

§ 504. Remedies for infringement: Damages and profits

(a) *In General.*—Except as otherwise provided by this title, an infringer of copyrights is liable for either—

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) *Actual Damages and Profits.*—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) *Statutory Damages.*—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$250 or more than \$10,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$50,000. In a case where the infringer sustains the burden of proving,

and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court it¹ its discretion may reduce the award of statutory damages to a sum of not less than \$100. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

§ 505. Remedies for infringement: Costs and attorney's fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

§ 506. Criminal Offenses

(a) *Criminal infringement*.—Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be punished as provided in section 2319 of title 18.

(b) *Forfeiture and Destruction*.—When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.

(c) *Fraudulent Copyright Notice*.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

(d) *Fraudulent Removal of Copyright Notice*.—Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.

(e) *False Representation*.—Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

§ 507. Limitations on actions

(a) *Criminal Proceedings*.—No criminal proceeding shall be maintained under the provisions of this title unless it is commenced within three years after the cause of action arose.

(b) *Civil Actions*.—No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

¹ So in original. Probably should read "in".

APPENDIX IV

**LEGISLATIVE HISTORY OF THE
COPYRIGHT ACT OF 1976**

- November 20, 1975— Senate Judiciary Committee Report Issued: S. Rep. No. 473, 94th Cong., 1st Sess. (1975).
- February 19, 1976— Senate approves bill, S.22.
- September 3, 1976— House of Representatives Committee on the Judiciary Report Issued: H.R. Rep. No. 1476, 94th Cong., 2d Sess. (1976).
- September 22, 1976— House approves bill amending S.22.
- September 29, 1976— Conference Report Issued: H.R. Rep. No. 1733, 94th Cong., 2d Sess. (1976).
- October 19, 1976— Public Law 94-553, the Copyright Act of 1976 signed by the President.
- January 1, 1978— Act became effective.

APPENDIX V

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR- PROFIT EDUCATIONAL INSTITUTIONS

The purpose of the following guidelines is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely, that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; *provided that*:

- A. The copying meets the tests of brevity and spontaneity as defined below; and,
- B. Meets the cumulative effect test as defined below; *and*,
- C. Each copy includes a notice of copyright.

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) "Special works": Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

- B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
 - (a) substitute for the purchase of books, publishers' reprints or periodicals;
 - (b) be directed by higher authority;
 - (c) be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

APPENDIX VI

GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. *Permissible Uses*

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) or copyrighted music may be made from sound recordings owned by an educa-

tional institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A (1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

APPENDIX VII

GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

In March of 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the forty-five (45) calendar day retention period.
4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

APPENDIX VIII

PHOTOCOPYING—INTERLIBRARY ARRANGEMENTS

INTRODUCTION

Subsection 108(g)(2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies of phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108(g)(2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals—those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

GUIDELINES FOR THE PROVISIO OF SUBSECTION 108(G)(2)

1. As used in the proviso of subsection 108(g)(2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:
 - (a) With respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an ar-

ticle or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "... such aggregate quantities as to substitute for a subscription to [such periodical]".

- (b) With respect to any other material described in subsection 108(d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.
2. In the event that a requesting entity—
 - (a) shall have in force or shall have entered an order for a subscription to a periodical, or
 - (b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.
 3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.
 4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.
 5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

The conference committee is aware that an issue has arisen as to the meaning of the phrase "audiovisual news program" in section 108(f)(3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108(a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and

on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

Another point of interpretation involves the meaning of "indirect commercial advantage," as used in section 108(a)(1), in the case of libraries or archival collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108(a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

APPENDIX IX
**DISPLAY AND ORDER
WARNING NOTICE**

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be held liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of that order would involve violation of copyright law.

Libraries must display prominently the above notice, at the place where orders for reproduction are accepted and must include on its order form the above warning of copyright. The notice must be:

- 18 point type, displayed prominently; and
- on the order form, same size as other type but no smaller than 8 point, in front of or next to signature bar.

APPENDIX X

SAMPLE POLICY

Registering Copyrighted Materials

The placing of the c seal on a work insures a common law copyright, but registering of copyrighted materials with the U.S. Copyright Office is preferable.

After a work is published, a TX form should be filled out and filed with the U.S. Copyright Office, accompanied by the appropriate fee and two copies of the work. The TX form, copyright fee and two copies of the work must be sent under the same cover.

Directions for filling out the form come with the TX application which may be obtained from the U.S. Copyright Office, Library of Congress, Washington, D.C. 20559.

A copy of TX form filed for a Department of Instructional Services' publication is included as well as a blank TX form with instructions.

All FCPS curriculum guides submitted for publication should carry the following information on the title page or page immediately following the title page:

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APPENDIX XI
**FEDERAL FORMS FOR
COPYRIGHT REGISTRATION**

Filling Out Application Form TX

Detach and read these instructions before completing this form. Make sure all applicable spaces have been filled in before you return this form.

BASIC INFORMATION

When to Use This Form: Use Form TX for registration of published or unpublished non-dramatic literary works, excluding periodicals or serial issues. This class includes a wide variety of works: fiction, non-fiction, poetry, textbooks, reference works, directories, catalogs, advertising copy, compilations of information, and computer programs. For periodicals and serials, use Form SE.

Deposit to Accompany Application: An application for copyright registration must be accompanied by a deposit consisting of copies or phonorecords representing the entire work for which registration is to be made. The following are the general deposit requirements as set forth in the statute:

Unpublished Work: Deposit one complete copy (or phonorecord)

Published Work: Deposit two complete copies (or phonorecords) of the best edition.

Work First Published Outside the United States: Deposit one complete copy (or phonorecord) of the first foreign edition.

Contribution to a Collective Work: Deposit one complete copy (or phonorecord) of the best edition of the collective work.

The Copyright Notice: For published works, the law provides that a copyright notice in a specified form "shall be placed on all publicly distributed copies from which the work can be visually perceived." Use of the

copyright notice is the responsibility of the copyright owner and does not require advance permission from the Copyright Office. The required form of the notice for copies generally consists of three elements: (1) the symbol "©," or the word "Copyright," or the abbreviation "Copr.," (2) the year of first publication, and (3) the name of the owner of copyright. For example: "© 1994 Constance Porter." The notice is to be affixed to the copies "in such manner and location as to give reasonable notice of the claim of copyright."

For further information about copyright registration, notice, or special questions relating to copyright problems, write:
Information and Publications Section, LM-455
Copyright Office
Library of Congress
Washington, D.C. 20559

PRIVACY ACT ADVISORY STATEMENT Required by the Privacy Act of 1974 (Public Law 93-579)

AUTHORITY FOR REQUESTING THIS INFORMATION:
• Title 17 U.S.C. Secs. 408 and 410
FOURNISHED THE REQUESTED INFORMATION IS:
• Voluntary
• But if the information is not furnished:
• It may be necessary to delay or refuse to answer.
• You may not be entitled to certain relief.
• If you wish to file a complaint, please refer to Appendix A and 5 of Title 17 U.S.C.

PRINCIPAL USES OR REQUESTED INFORMATION:
• Establishment and maintenance of a public record.
• Examination of the application for copyright with legal requirements.
• Other legal uses.
• Public inspection and copying.
• Publication of public information.
• Preservation of public records of copyright registration.
• Preservation of public records of copyright registration.
NOTE:
• No other advisory statement will be given you in connection with this application.
• Please keep this statement and return it if we communicate with you regarding this application.

LINE-BY-LINE INSTRUCTIONS

1 SPACE 1: Title

Title of This Work: Every work submitted for copyright registration must be given a title to identify that particular work. If the copies or phonorecords of the work bear a title (or an identifying phrase that could serve as a title), transcribe that wording completely and exactly on the application. Indexing of the registration and future identification of the work will depend on the information you give here.

Previous or Alternative Titles: Complete this space if there are any additional titles for the work under which someone searching for the registration might be likely to look, or under which a document pertaining to the work might be recorded.

Publication as a Contribution: If the work being registered is a contribution to a periodical, serial, or collection, give the title of the contribution in the "Title of this Work" space. Then, in the line headed "Publication as a Contribution," give information about the collective work in which the contribution appeared.

2 SPACE 2: Author(s)

General Instructions: After reading these instructions, decide who are the "authors" of this work for copyright purposes. Then, unless the work is a "collective work," give the requested information about every "author" who contributed any appreciable amount of copyrightable matter to this version of the work. If you need further space, request additional Continuation sheets. In the case of a collective work, such as an anthology, collection of essays, or encyclopedia, give information about the author of the collective work as a whole.

Name of Author: The fullest form of the author's name should be given. Unless the work was "made for hire," the individual who actually created the work is its "author." In the case of a work made for hire, the statute provides that "the employer or other person for whom the work was prepared is considered the author."

What is a "Work Made for Hire?" A "work made for hire" is defined as: (1) a work prepared by an employee within the scope of his or her employment; or (2) "a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." If you have checked "Yes" to indicate that the work was "made for hire," you must give the full legal name of the employer (or other person for whom the work was prepared). You may also include the name of the employee along with the name of the employer (for example: "Elster Publishing Co., employer for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if that author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous," you may: (1) leave the line blank, or (2) state "anonymous" on the line, or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank, or (2) give the pseudonym and identify it as such (for example: "Huntley Havenstock, pseudonym"); or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example: "Judith Barton, whose pseudonym is Madeline Elster"). However, the citizenship or domicile of the author must be given in all cases.

Dates of Birth and Death: If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional, but is useful as a form of identification. Leave this space blank if the author's contribution was a "work made for hire."

Author's Nationality or Domicile: Give the country of which the author is a citizen, or the country in which the author is domiciled. Nationality or domicile must be given in all cases.

Nature of Authorship: After the words "Nature of Authorship" give a brief general statement of the nature of this particular author's contribution to the work. Examples: "Entire text," "Coauthor of entire text," "Chapters 11-14," "Editorial revisions," "Compilation and English translation," "New text."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute, a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending;" a work is also "published" if there has been an "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display." Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Names and Addresses of Copyright Claimant(s): Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 2, give a brief, general statement summarizing the means by which that claimant obtained ownership of the copyright. Examples: "By written contract," "Transfer of all rights by author," "Assignment," "By will." Do not attach transfer documents or other attachments or notes.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to find out whether an earlier registration has been made for this work and, if so, whether there is any basis for a new registration. As a general rule, only one basic copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition, or (2) someone other than the author is identified as copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions apply, check the appropriate box and give the earlier registration number and date. Otherwise, do not submit Form TX; instead, write the Copyright Office for information about supplementary registration or recordation of transfers of copyright ownership.

Changed Version: If the work has been changed, and you are now seeking registration to cover the additions or revisions, check the last box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instructions below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work," and if it incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as

a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include translations, fictionalizations, abridgments, condensations, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications;" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): For derivative works, complete this space and space 6b. In space 6a identify the preexisting work that has been recast, transformed, or adapted. An example of preexisting material might be "Russian version of Gorchakov's 'Oblomov.'" Do not complete space 6a for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the new material covered by the copyright claim for which registration is sought. Derivative work examples include: "Foreword, editing, critical annotations," "Translation," "Chapters 11-17." If the work is a compilation, describe both the compilation itself and the material that has been compiled. Example: "Compilation of certain 1917 Speeches by Woodrow Wilson." A work may be both a derivative work and compilation, in which case a sample statement might be: "Compilation and additional new material."

7 SPACE 7: Manufacturing Provisions

General Instructions: The copyright statute currently provides, as a general rule, that the copies of a published work "consisting preponderantly of nondramatic literary material in the English language" be manufactured in the United States or be lawfully imported and publicly distributed in the United States. If the work being registered is unpublished or not in English, leave this space blank. Complete this space if registration is sought for a published work "consisting preponderantly of nondramatic literary material that is in the English language." Identify those who manufactured the copies and where those manufacturing processes were performed. As an exception to the manufacturing provisions, the statute prescribes that, where manufacture has taken place outside the United States or Canada, a maximum of 2000 copies of the foreign edition may be imported into the United States without affecting the copyright owner's rights. For this purpose, the Copyright Office will issue an Import Statement upon request and payment of a fee of \$3 at the time of registration or at any later time. For further information about import statements, write for Form IS.

8 SPACE 8: Reproduction for Use of Blind or Physically Handicapped Individuals

General Instructions: One of the major programs of the Library of Congress is to provide Braille editions and special recordings of works for the exclusive use of the blind and physically handicapped. In an effort to simplify and speed up the copyright licensing procedures that are a necessary part of this program, section 710 of the copyright statute provides for the establishment of a voluntary licensing system to be tied in with copyright registration. Copyright Office regulations provide that you may grant a license for such reproduction and distribution solely for the use of persons who are certified by a competent authority as unable to read normal printed material as a result of physical limitations. The license is entirely voluntary, nonexclusive, and may be terminated upon 90 days notice.

How to Grant the License: If you wish to grant it, check one of the three boxes in space 8. Your check in one of these boxes, together with your signature in space 10, will mean that the Library of Congress can proceed to reproduce and distribute under the license without further paperwork. For further information, write for Circular R63.

9, 10, 11 SPACE 9, 10, 11: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 9. Otherwise leave the space blank and send the fee of \$10 with your application and deposit.

Correspondence (space 9): This space should contain the name, address, area code, and telephone number of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 10): The application can not be accepted unless it bears the date and the handwritten signature of the author or other copyright claimant, or of the owner of exclusive rights, or of the duly authorized agent of author, claimant, or owner of exclusive rights.

Address for Return of Certificate (space 11): The address box must be completed legibly since the certificate will be returned in a window envelope.

FORM TX

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX TXU
EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a
"work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR ☐ Citizen of ☐ Domiciled in ☐

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ No ☐ Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NOTE

Under the law, the author of a work made for hire is generally the employer, not the employee. See instructions for any part of this work that was made for hire. Check "Yes" in the space provided, give the employee (or other person for whom the work was prepared) as author of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a
"work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR ☐ Citizen of ☐ Domiciled in ☐

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ No ☐ Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a
"work made for hire"? ☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR ☐ Citizen of ☐ Domiciled in ☐

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ No ☐ Pseudonymous? ☐ Yes ☐ No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3
4

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ▶ Complete all applicable spaces numbers 5-10 on the reverse side of this page. ▶ See detailed instructions. ▶ Sign the form at line 10.

DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY _____ CHECKED BY _____ ☐ CORRESPONDENCE ☐ DEPOSIT ACCOUNT FUNDS USED	FORM TX FOR COPYRIGHT OFFICE USE ONLY
--	---

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

☐ This is the first published edition of a work previously registered in unpublished form.

☐ This is the first application submitted by this author as copyright claimant.

☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

MANUFACTURERS AND LOCATIONS If this is a published work consisting predominantly of nondramatic literary material in English, the law may require that the copies be manufactured in the United States or Canada for full protection. If so, the names of the manufacturers who performed certain processes, and the places where these processes were performed must be given. See instructions for details.

Names of Manufacturers ▼ Places of Manufacture ▼

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols), or (2) phonorecords embodying a fixation of a reading of that work, or (3) both.

a ☐ Copies and Phonorecords b ☐ Copies Only c ☐ Phonorecords Only

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name Address Apt City State Zip ▼

Area Code & Telephone Number ▼

CERTIFICATION I, the undersigned, hereby certify that I am the

Check one ▼

☐ author

☐ other copyright claimant

☐ owner of exclusive rights

☐ authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant or owner of exclusive rights; &

Typed or printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

Date ▼

Handwritten signature (10) ▼

SEAL CERTIFICATE TO Certificate will be mailed in window envelope	Name ▼ Number Street Apartment Number ▼ City State ZIP ▼	Other fees: • Completed or necessary material? • Signed your application in space 10? • Enclosed check or money order for \$10 payable to Registrar of Copyrights? • Enclosed your deposit material with the application and fee? MAIL TO: Register of Copyrights, Library of Congress, Washington D.C. 20540
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11

* 17 U.S.C. § 108(b): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 108, or in any written statement filed in connection with the application, shall be liable for more than \$2,500.

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Sept. 1983-600-000

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute, a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending; a work is also 'published' if there has been an 'offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display.' Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s): Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 2, give a brief, general statement summarizing the means by which that claimant obtained ownership of the copyright. Examples: "By written contract," "Transfer of all rights by author," "Assignment," "By will." Do not attach transfer documents or other attachments or notes.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to find out whether an earlier registration has been made for this work, and, if so, whether there is any basis for a new registration. As a general rule, only one basic copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless: (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition; or (2) someone other than the author is identified as copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions apply, check the appropriate box and give the

earlier registration number and date. Otherwise, do not submit Form PA, in whole, write the Copyright Office for information about supplementary registration or recodification or transfers of copyright ownership.

Changed Version: If the work has been changed, and you are now seeking registration to cover the additions or revisions, check the last box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instructions below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work," and if it incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include musical arrangements, dramatizations, translations, abridgments, condensations, motion picture versions or, any other form in which a work may be recast, transformed or adapted. Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): Complete this space and space 6b for derivative material (space 6a). Complete this space and space 6b for preexisting material (space 6b). For example, the preexisting material might be "French version of Hugo's *Le Roi s'amuse*." Do not complete this space for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the additional new material covered by the copyright claim for which registration is sought. In the case of a derivative work, identify this new material. Examples: "Arrangement for piano and orchestra," "Dramatization for television," "New film version," "Revisions throughout Act III, completely new." If the work is a compilation, give a brief, general statement describing both the material that has been compiled and the compilation itself. Example: "Compilation of 19th Century Military Songs."

7, 8, 9 SPACE 7, 8, 9: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 7. Otherwise, leave the space blank and send the fee of \$10 with your application and deposit.

Correspondence (space 7): This space should contain the name, address, area code, and telephone number of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 8): The application cannot be accepted unless it bears the date and the handwritten signature of the author or other copyright claimant, or of the owner of exclusive rights, or of the duly authorized agent of the author, claimant, or owner of exclusive rights.

Address for Return of Certificate (space 9): The address box must be completed legibly since the certificate will be returned in a window envelope.

MORE INFORMATION

How To Register a Recorded Work: If the musical or dramatic work that you are registering has been recorded (as a tape, disk, or cassette) you may choose either copyright application Form PA or Form SR. Performing Arts or Sound Recordings, depending on the purpose of the registration.

Form PA should be used to register the underlying musical composition or dramatic work. Form SR has been developed specifically to register a "sound recording," as defined by the Copyright Act—a work resulting from the "fixation of a series of sounds, separate and distinct from the underlying musical or dramatic work." Form SR should be used when the copyright claim is limited to the sound recording itself. (In one instance, Form SR may also be used to file for a copyright registration for both kinds of works—see (4) below.) Therefore:

(1) **File Form PA** if you are seeking to register the musical or dramatic work, not the "sound recording," even though what you deposit for copyright purposes may be in the form of a phonorecord.

(2) **File Form SR** if you are seeking to register the audio portion of an audio-visual work such as a motion picture soundtrack; these are considered integral parts of the audiovisual work.

(3) **File Form SR** if you are seeking to register the "sound recording," itself, that is, the work that results from the fixation of a series of musical, spoken, or other sounds, but not the underlying musical or dramatic work.

(4) **File Form SR** if you are the copyright claimant for both the underlying musical or dramatic work and the sound recording, and you prefer to register both on the same form.

(5) **File both Form PA and SR** if the copyright claimant for the underlying work and sound recording differs or you prefer to have separate registration for them.

"Copies" and "Phonorecords": To register for copyright, you are required to deposit "copies" or "phonorecords." These are defined as follows:

Musical compositions may be embodied (fixed) in "copies," objects from which a work can be read or visually perceived directly or with the aid of a machine or device, such as manuscripts, books, sheet music, film and videotape. They may also be fixed in "phonorecords," objects embodying fixations of sounds, such as tapes and phonograph disks, commonly known as phonograph records. For example, a song (the work to be registered) can be reproduced in sheet music ("copies") or phonograph records ("phonorecords") or both.

FORM PA

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

FILE	FILED
EFFECTIVE DATE OF REGISTRATION	
Month	Day

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK

PREVIOUS OR ALTERNATIVE TITLES

NATURE OF THIS WORK See instructions

2

NOTE

Under the law, the author of a work made for hire is generally the employer, not the employee. If the work is created by an employee, the employer is the author. For the purpose of this form, the work made for hire is the work made by an employee of the employer, or the work made by a person for whom the work was prepared, as author of the work, and must be made for hire of both the author and the employer.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?

☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

Citizen of

Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonym? ☐ Yes ☐ No

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by the author in which copyright is claimed.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?

☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

Citizen of

Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonym? ☐ Yes ☐ No

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by the author in which copyright is claimed.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?

☐ Yes ☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

Citizen of

Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonym? ☐ Yes ☐ No

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by the author in which copyright is claimed.

3

4

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

This information must be given

If "Yes" in all cases

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published

Year Month Day

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2

See instructions before completing this space

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright

See instructions before completing this space

MORE ON BACK

Complete all required fields, including 5, 6, and 7, on the reverse side of this page. See detailed instructions. Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 1

EXAMINED BY _____	FORM PA
CHECKED BY _____	
☐ CORRESPONDENCE	FOR COPYRIGHT OFFICE USE ONLY
☐ DEPOSIT ACCOUNT FUNDS USED	

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION This registration for this work, or for an earlier version of the work, already been made in the Copyright Office?

- ☐ Yes ☐ No If your answer is "Yes," who is another registration being sought? (Check appropriate box.)
- ☐ This is the first published edition of a work previously registered in unpublished form.
- ☐ This is the first application submitted by the author as copyright claimant.
- ☐ This is a changed version of the work, as shown by space 6 on this application.
- If your answer is "Yes," give Previous Registration Number _____ Year of Registration _____

DERIVATIVE WORK OR COMPILATION Complete both space 6 & 10 for a derivative work, complete only 10 for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates.b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.**DEPOSIT ACCOUNT** If this registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name Address City State Zip**CERTIFICATION*** I, the undersigned, hereby certify that I am the:

- Check only one.
- ☐ author
- ☐ other copyright claimant
- ☐ owner of exclusive rights
- ☐ authorized agent of _____
- Name of author or other copyright claimant or owner of exclusive rights

of the work described in this application and that the statements made by me in this application are correct to the best of my knowledge.

Signed as printed name and date. If this is a published work, this date must be the same as or later than the date of publication given in space 7.


 Handwritten signature (X)
MAIL CERTIFICATE TO

Certificate will be mailed in envelope.

Name _____
Number Street Apartment Number _____
City State ZIP _____

Notes:

1. Copyright is automatic upon creation of a work.

2. Copyright is not required for publication of a work.

3. Copyright is not required for a work to be eligible for registration.

4. Copyright is not required for a work to be eligible for registration.

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99. Copyright is not required for a work to be eligible for registration.

100. Copyright is not required for a work to be eligible for registration.

* 17 U.S.C. § 410(b). Any person who knowingly makes a false representation of a name filed in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$5,000.

U.S. Copyright Office, 1000 ...

Filling Out Application Form VA

Detach and read these instructions before completing this form. Make sure all applicable spaces have been filled in before you return this form.

BASIC INFORMATION

When to Use This Form: Use Form VA for copyright registration of published or unpublished works of the visual arts. This category consists of: pictorial, graphic, or sculptural works, including two-dimensional and three-dimensional works of fine, graphic, and applied art; photographs, prints and art reproductions; maps, globes, charts, technical drawings, diagrams, and models.

What Does Copyright Protect? Copyright in a work of the visual arts protects those pictorial, graphic, or sculptural elements that, either alone or in combination, represent an original work of authorship. The statute declares "in no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery regardless of the form in which it is described, explained, illustrated, or embodied in such work."

Works of Artistic Craftsmanship and Designs: Works of artistic craftsmanship are registrable on Form VA, but the statute makes clear that protection extends to "their form" and not to "their mechanical or utilitarian aspects." The design of a useful article is considered copyrightable "only if, and only to the extent that, such design is a pictorial, graphic, or sculptural feature that can be identified separately from, and is capable of existing independently of, the utilitarian aspects of the article."

Labels and Advertisements: Works prepared for use in connection with the sale or advertisement of goods and services are registrable if they contain original work of authorship. Use Form VA if the copyrightable material in the work you are registering is mainly pictorial or graphic; use Form TX if it consists mainly of text. NOTE: Words and short phrases such as names, titles, and slogans cannot be protected by copyright, and the same is true of standard symbols, emblems, and other commonly used graphic designs that are in the public domain. When used commercially, material of that sort can sometimes be protected under state laws of unfair competition or under the Federal trademark laws. For information about trademark registration, write to the Commissioner of Patents and Trademarks, Washington, D.C. 20530.

Deposit to Accompany Application: An application for copyright registration must be accompanied by a deposit consisting of copies representing the entire work for which registration is to be made.

entire work for which registration is to be made.

Unpublished Work: Deposit one complete copy.

Published Work: Deposit two complete copies of the best edition.

Work First Published Outside the United States: Deposit one complete copy of the first foreign edition.

Contribution to a Collective Work: Deposit one complete copy of the best edition of the collective work.

The Copyright Notice: For published works, the law provides that a copyright notice of a specified form "shall be placed on all publicly distributed copies from which the work can be visually perceived." Use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from the Copyright Office. The required form of the notice for copies generally consists of three elements: (1) the symbol "©," or the word "Copyright," or the abbreviation "Cope"; (2) the year of first publication; and (3) the name of the owner of copyright. For example: © 1985 Constance Foster. The notice is to be affixed to the copies "in such manner and location as is given reasonable notice of the claim of copyright."

For further information about copyright registration, notice, or special questions relating to copyright problems, write Information and Publications Section, LM-495 Copyright Office, Library of Congress, Washington, D.C. 20540.

Privacy Act Administrative Statement: Requested by the Privacy Act of 1974 (PL 93-579). The authority for releasing this information is 5 U.S.C. 552(a)(3) and (D). Furnishing this information is voluntary. But the information is not furnished if it may be necessary to show it to the requester and you may not be entitled to certain other services and benefits provided by the Act (5 U.S.C. 552(a)(3)).

The principle use of this information is for the establishment and maintenance of a public record and the transmission of this information to compliance with legal requirements.

Other users may include public inspection and copying, presentation of public interest, preparation of public listings of copyright registrations, and preparation of search reports for requesters. NOTE: No other persons, agencies, or entities in connection with this application. Please have this statement and refer to it as we communicate with you regarding this application.

LINE-BY-LINE INSTRUCTIONS

1 SPACE 1: Title

Title of This Work: Every work submitted for copyright registration must be given a title to identify that particular work. If the copies of the work bear a title for an identifying phrase that could serve as a title, transcribe that wording completely and exactly on the application. Indexing of the registration and future identification of the work will depend on the information you give here.

Previous or Alternative Titles: Complete this space if there are any additional titles for the work under which someone searching for the registration might be likely to look, or under which a document pertaining to the work might be recorded.

Publication as a Contribution: If the work being registered is a contribution to a periodical, serial, or collection, give the title of the contribution in the "Title of This Work" space. Then, in the line headed "Publication as a Contribution," give information about the collective work in which the contribution appeared.

Nature of This Work: Briefly describe the general nature or character of the pictorial, graphic, or sculptural work being registered for copyright. Examples: Oil Painting, Charcoal Drawing, Etching, Sculpture, Map, Photograph, Scale Model, Lithographic Print, Jewelry Design, Fabric Design.

2 SPACE 2: Author(s)

General Instructions: After reading these instructions, decide who are the "authors" of this work for copyright purposes. Then, unless the work is a collective work, give requested information about every "author" who contributed any appreciable amount of copyrightable matter to this version of the work. If you need further space, request Additional Continuation Sheets. In the case of a collective work, such as a catalog of paintings or collection of cartoons by various authors, give information about the author of the collec-

tion work as a whole.

Name of Author: The fullest form of the author's name should be given. Unless the work was "made for hire," the individual who actually created the work is its "author." In the case of a work made for hire, the statute provides that "the employer or other person for whom the work was prepared is considered the author."

What is a "Work Made for Hire?" A "work made for hire" is defined as: (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. If you have checked "Yes" to indicate that the work was "made for hire," you must give the full legal name of the employer (or other person for whom the work was prepared). You may also include the name of the employee along with the name of the employer (for example "Ester Publishing Co., employer for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if that author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous" you may: (1) leave the line blank; or (2) state "anonymous" on the line or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank; or (2) give the pseudonym and identify it as such (for example "Huntley Haverstock, pseudonym"), or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example "Henry Leek, whose pseudonym is Fran Farrell"). However, the citizenship or domicile of the author must be given in all cases.

Dates of Birth and Death: If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional, but is useful as a form of identification. Leave this space blank if the author's contribution was a "work made for hire."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form at a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending; a work is also 'published' if there has been an 'offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display.'" Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s): Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 3, give a brief, general statement summarizing the means by which that claimant obtained ownership of the copyright. Examples: "By written contract," "Transfer of all rights by author," "Assignment," "Will." Do not attach transfer documents or other attachments or riders.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to find out whether an earlier registration has been made for this work and, if so, whether there is any basis for a new registration. As a rule, only one basic copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless: (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition; or (2) someone other than the author is identified as copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions apply, check the appropriate box and give the earlier registration number and date. Otherwise, do not submit Form SR; instead, write the Copyright Office for information about supplementary registration or recordation of transfers of copyright ownership.

MORE INFORMATION

"Works": Works are the basic subject matter of copyright; they are what authors create and copyright protects. The statute draws a sharp distinction between the "work" and "any material object in which the work is embodied."

"Copies" and "Phonorecords": These are the two types of material objects in which "works" are embodied. In general, "copies" are objects from which a work can be read or visually perceived, directly or with the aid of a machine or device, such as manuscripts, books, sheet music, film, and videotape. "Phonorecords" are objects embodying fixations of sounds, such as audio tapes and phonograph disks. For example, a song (the "work") can be reproduced in sheet music ("copies") or phonograph disks ("phonorecords"), or both.

"Sound Recordings": These are "works," not "copies" or "phonorecords." "Sound recordings" are "works that result from the fixation in a series of musical, spoken, or other sounds, but not including the sound's accompanying or motion picture or other audiovisual work." Example: When a record company makes a new release, the release will typically involve two distinct "works": the "musical work" that has been recorded, and the "sound recording" as a separate work in itself. The material objects that the record com-

Changed Version: If the work has been changed, and you are now seeking registration to cover the additions or revisions, check the box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instructions below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work," and if it incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain, or sound recordings that were fixed before February 15, 1972. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, collected, arranged in such a way that the resulting work as a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include recordings remixed with substantial editorial revisions or abridgments of the recorded sounds, and recordings republished with new recorded material, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): Complete this space and space 6b for derivative works. In this space identify the preexisting work that has been recast, transformed, or adapted. For example, the preexisting material might be "1970 recordings by Symphonic Symphonies of Bach Double Concertos." Do not complete this space for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the additional new material covered by the copyright claim for which registration is sought. In the case of a derivative work, identify this new material. Examples: "Recorded performances on bands 1 and 2." "Retained sounds from original multitrack sound sources." "New words, arrangement, and additional sounds." If the work is a compilation, give a brief, general statement describing both the material that has been compiled and the compilation itself. Example: "Compilation of 1938 Recordings by various swing bands."

7, 8, 9 SPACE 7, 8, 9: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 7. Otherwise, leave the space blank and send the fee of \$10 with your application and deposit.

Correspondence (space 8): This space should contain the name, address, area code, and telephone number of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 9): The application cannot be accepted unless it bears the date and the handwritten signature of the author or other copyright claimant, or of the owner of exclusive rights, or of the duly authorized agent of the author, claimant, or owner of exclusive rights.

Address for Return of Certificate (space 9): The address box must be completed legibly since the certificate will be returned in a window envelope.

parts ends not are "phonorecords" physical reproductions of both the "musical work" and the "sound recording."

Should You File More Than One Application? If you submit one or more of a recorded musical, dramatic, or literary work, and both that "work" and the sound recording as a separate "work," are eligible for registration, the application form you should file depends on the following:

File Only Form SR if: The copyright claimant is the same for both the musical, dramatic, or literary work and for the sound recording, and you are seeking a single registration to cover both of these works.

File Only Form PH (or Form TR) if: You are seeking to register only the musical, dramatic, or literary work, not the sound recording. Form PH is appropriate for works of the performing arts. Form TR is for nondramatic literary works.

Separate Applications Should Be Filed on Form PH (or Form TR) and on Form SR if: (1) The copyright claimant for the musical, dramatic, or literary work is different from the copyright claimant for the sound recording; or (2) you prefer to have separate registrations for the musical, dramatic, or literary work and for the sound recording.

FORM VA

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

EFFECTIVE DATE OF REGISTRATION

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK *

SUBJECT OF THIS WORK * See instructions

PREVIOUS OR ALTERNATIVE TITLES *

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work *

If published in a periodical or serial give Volume # Number # Issue Date # Or Pages #

2

NAME OF AUTHOR *

DATES OF BIRTH AND DEATH

Was this contribution to the work a

AUTHOR'S NATIONALITY OR DOMICILE

WAS THIS AUTHOR'S CONTRIBUTION TO

Yes ☐ No ☐OR ☐ Citizen of U.S. ☐ Domiciled in U.S.Anonymous? ☐ Yes ☐ No ☐Pseudonym? ☐ Yes ☐ No ☐

NOTE

Under the law

the author of a

work made for

hire is generally

the employee.

For any part of the

work that was

made for hire

check "Yes" in

the space provided.

If the author is

another person to

whom the work

was prepared,

as author of

that part, and

want the space

for name of self

and birth date.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed. *

NAME OF AUTHOR *

DATES OF BIRTH AND DEATH

Was this contribution to the work a

AUTHOR'S NATIONALITY OR DOMICILE

WAS THIS AUTHOR'S CONTRIBUTION TO

Yes ☐ No ☐OR ☐ Citizen of U.S. ☐ Domiciled in U.S.Anonymous? ☐ Yes ☐ No ☐Pseudonym? ☐ Yes ☐ No ☐

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed. *

NAME OF AUTHOR *

DATES OF BIRTH AND DEATH

Was this contribution to the work a

AUTHOR'S NATIONALITY OR DOMICILE

WAS THIS AUTHOR'S CONTRIBUTION TO

Yes ☐ No ☐OR ☐ Citizen of U.S. ☐ Domiciled in U.S.Anonymous? ☐ Yes ☐ No ☐Pseudonym? ☐ Yes ☐ No ☐

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed. *

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

4 Year

ONLY if this work has been published

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 *

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REFERENCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. *

MORE ON BACK * Complete all applicable spaces numbers 5, 6, on the reverse side of this page. * See related instructions. * Sign the form in line 5.

DO NOT WRITE HERE

Page 1 of 1 pages

FORM 100

EXAMINED BY _____

CHECKED BY _____

☐ CORRESPONDENCE

☐ DEPOSIT ACCOUNT FUNDS (SEE)

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION: The registration for this work, or for an earlier version of this work, already been made in the Copyright Office.

☐ No ☐ Yes. If your answer is "Yes," who is another registration being sought? (Check appropriate box.)

☐ This is the first published edition of a work previously registered in unpublished form.

☐ This is the first application submitted by the author as copyright claimant.

☐ This is a changed version of the work, as shown by space 5 on this application.

If your answer is "Yes," give Previous Registration Number _____ Date of Registration _____

DERIVATIVE WORK OR COMPILATION: Complete both space 6 & 7 for a derivative work; complete only 6 for a compilation.

a. Promoting Material: Identify any promoting work or works that this work is based on or incorporates.

b. Material Added to This Work: Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

DEPOSIT ACCOUNT: If the registration fee is to be charged to a Deposit Account maintained at the Copyright Office, give name and number of Account.

Name _____ Account Number _____

CORRESPONDENCE: Give name and address to which correspondence about this application should be sent. Name Address Apt City State Zip _____

Area Code & Telephone Number _____

CERTIFICATION: I, the undersigned, hereby certify that I am the:

☐ author

☐ owner copyright claimant

☐ owner of exclusive rights

☐ Authorized agent of _____

Name of Author or other copyright claimant or owner of exclusive rights _____

If the work identified in this application and that the statements made by me on this application are correct to the best of my knowledge.

Typed or printed name and date: If this is a published work, this date must be the same as or later than the date of publication given in space 1.

_____ Date _____

Handwritten signature (S): _____

MAIL CERTIFICATE TO:

Name _____

Number Street Apartment Number _____

City State ZIP _____

Notes:

- Complete all technical questions.
- Sign your application in black ink.
- Enclosed check or money order \$10 payable to Register of Copyrights.
- Enclose your deposit material with the application and fee.

MAIL TO: Register of Copyrights, Library of Congress, Washington, D.C. 20540

Certificates will be mailed in window envelope

* If U.S. & FOREIGN. Any person who knowingly makes a false statement or a material error in the application for copyright registration provided for by Section 108 in any written statement filed in connection with the application shall be liable under Title 17, USC.

U.S. & GOVERNMENT PRINTING OFFICE: 1982 30-279468

Filling Out Application Form SR

Detach and read these instructions before completing this form. Make sure all applicable spaces have been filled in before you return this form.

BASIC INFORMATION

When to Use This Form: Use Form SR for copyright registration of published or unpublished sound recordings. It should be used when the copyright claim is limited to the sound recording itself, and it may also be used when the same copyright claimant is seeking simultaneous registration of the underlying musical, dramatic, or literary work embodied in the phonorecord.

With new recordings, "sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds. The exception is for the audio portions of audiovisual works, such as a motion picture soundtrack or an audio cassette accompanying a filmstrip. These are considered a part of the audiovisual work as a whole.

Deposit to Accompany Application: An application for copyright registration of a sound recording must be accompanied by a deposit consisting of phonorecords representing the entire work for which registration is to be made.

Unpublished Work: Deposit one complete phonorecord.

Published Work: Deposit two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with the phonorecord.

Work First Published Outside the United States: Deposit one complete phonorecord of the first foreign edition.

Classification as a Collective Work: Deposit one complete phonorecord of the best edition of the collective work.

The Copyright Notice: For published sound recordings, the law provides that a copyright notice in a specified form must be placed on all publicly distributed phonorecords of the sound recording. Use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from the Copyright Office. The required form of the notice for phonorecords of sound recordings consists of three elements: (1) the symbol "©" (the letter "C" in a circle); (2) the year of first publication of the sound recording; and (3) the name of the owner of copyright. For example: "© 1981 Entertainment Record Co." The notice is to be placed on the surface of the phonorecord, or on the label or container, in such manner and location as to give one sensible notice of the claim of copyright. For further information about copyright, write Information and Publications Section, U.S. Copyright Office, Washington, D.C. 20540.

PROTECT ACT ADVISORY INFORMATION: Received by the Privacy Act of 1974 (PL 93-597).

The authority for releasing this information is the U.S. Copyright Office (U.S. Copyright Office) and the U.S. Copyright Office is releasing this information in accordance with the provisions of the Privacy Act of 1974 (PL 93-597).

The purpose of this advisory information is to inform the public of the availability of this information and to inform the public of the procedures for obtaining this information.

Other copies of this information are available to the public upon request. For more information, contact the U.S. Copyright Office, Washington, D.C. 20540. For more information, contact the U.S. Copyright Office, Washington, D.C. 20540.

LINE-BY-LINE INSTRUCTIONS

1 SPACE 1: Title

Title of This Work: Every work submitted for copyright registration must be given a title to identify that particular work. If the phonorecord or any accompanying printed material bears a title for an identifying phrase that could serve as a title, transcribe that wording completely and exactly on the application. Indenting of the registration and future identification of the work may depend on the information you give here.

Nature of Material Recorded: Indicate the general type or character of the works or other material embodied in the recording. The two marked "Lines" should be checked for nondramatic spoken material of all sorts, including narration, interviews, panel discussions, and training material. If the material recorded is not musical, dramatic, or literary in nature, check "Other" and briefly describe the type of sounds fixed in the recording. For example: "Sound Effects," "Bird Calls," "Crowd Noises."

Previous or Alternative Titles: Complete this space if there are any additional titles for the work under which someone searching for the registration might be likely to look, or under which a document pertaining to the work might be recorded.

2 SPACE 2: Author(s)

General Instructions: After reading these instructions, decide who are the "author(s)" of this work for copyright purposes. Then, unless the work is a "collective work," give the requested information about every "author" who contributed any appreciable amount of copyrightable matter to this version of the work. If you need further space, request additional Continuation Sheets. In the case of a collective work, such as a collection of previously published or requested sound recordings, give information about the author of the collective work as a whole. If you are submitting this Form SR to cover the recorded musical, dramatic, or literary work as well as the sound recording itself, it is important for space 2 to include full information about the various authors of all of the material covered by the copyright claim, making clear the nature of each author's contribution.

Name of Author: The fullest form of the author's name should be given. Unless the work was "made for hire," the individual who actually created the work is the "author." In the case of a work made for hire, the statute provides that "the employer or other person for whom the work was prepared is considered the author."

What is a "Work Made for Hire?" A "work made for hire" is defined as: (1) "a work prepared by an employee within the scope of his or her employment," or (2) "a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." If you have checked "Yes" to indicate that the work was "made for hire," you must give the full legal name of the employer (or other person for whom the work was prepared). You may also include the name of the employee along with the name of the employer (for example: "Eisen Record Co., employee for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if the author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous" you may: (1) leave the line blank, or (2) state "anonymous" on the line or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank, or (2) give the pseudonym and identify it as such (for example: "Huntley Horowitz, pseudonym"), or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example: "Judith Barton, whose pseudonym is Madeline Elton"). However, the citizenship or domicile of the author must be given in all cases.

Dates of Birth and Death: If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional, but is useful as a form of identification. Leave this space blank if the author's contribution was a "work made for hire."

Author's Nationality or Domicile: Give the country of which the author is a citizen, or the country in which the author is domiciled. Nationality or domicile must be given in all cases.

Nature of Authorship: Give a brief general statement of the nature of this particular author's contribution to the work. If you are submitting this Form SR to cover both the sound recording and the underlying musical, dramatic, or literary work, make sure that the precise nature of each author's contribution is reflected here. Examples where the authorship pertains to the recording: "Sound Recording," "Performance and Recording," "Compilation and Remaking of Sounds." Examples where the authorship pertains to both the recording and the underlying work: "Words, Music, Performance Recording," "Arrangement of Music and Recording," "Compilation of Poems and Reading."

Author's Nationality or Domicile: Give the country of which the author is a citizen, or the country in which the author is domiciled. Nationality or domicile must be given in all cases.

Nature of Authorship: Give a brief general statement of the nature of this particular author's contribution to the work. Examples: "Painting," "Photograph," "Full Screen Reproduction," "Co-author of Cartographic Material," "Technical Drawing," "Set and Artwork."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending." A work is also "published" if there has been an "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display." Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s): Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement or how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 2, give a brief, general statement summarizing the means by which that claimant obtained ownership of the copyright. Examples: "By written contract," "Transfer of all rights by author," "Assignment," "By will." Do not attach transfer documents or other attachments or riders.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to find out whether an earlier registration has been made for this work and, if so, whether there is any basis for a new registration. As a rule, only one basic copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition, or (2) some-

one other than the author is identified as copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions apply, check the appropriate box and give the earlier registration number and date. Otherwise do not submit Form VA. Instead, write the Copyright Office for information about supplementary registration or recordation or transfers of copyright ownership.

Changed Version: If the work has been changed, and you are now seeking registration to cover the additions or revisions, check the last box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instructions below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work," and if it incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include reproductions of works of art, sculptures based on drawings, lithographs based on paintings, maps based on previously published sources, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" (if these changes, as a whole, represent an original work of authorship).

Preexisting Material (space 6a): Complete this space and space 6b for derivative works. In this space identify the preexisting work that has been recast, transformed, or adapted. Examples of preexisting material might be "Crusade Altarpiece," or "19th century quilt design." Do not complete this space for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the additional new material covered by the copyright claim for which registration is sought. In the case of a derivative work, identify this new material. Examples: "Adaptation of design and additional artistic work," "Reproduction of painting by photolithography," "Additional cartographic material," "Compilation of photographs." If the work is a compilation, give a brief, general statement describing both the material that has been compiled and the compilation itself. Example: "Compilation of 19th Century Political Cartoons."

7, 8, 9 SPACE 7, 8, 9: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 7. Otherwise leave the space blank and send the fee of \$10 with your application and deposit.

Correspondence (space 7): This space should contain the name, address, area code, and telephone number of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 8): The application cannot be accepted unless it bears the date and the handwritten signature of the author or other copyright claimant, or of the owner of exclusive rights, or of the duly authorized agent of the author, claimant, or owner of exclusive rights.

Address for Return of Certificate (space 9): The address box must be completed legibly since the certificate will be returned in a window envelope.

MORE INFORMATION

Form of Deposit for Works of the Visual Arts

Exceptions to General Deposit Requirements: As explained on the reverse side of this page, the statutory deposit requirements generally are one copy for unpublished works and two copies for published works. There are, however, certain exceptions to these general rules. The copyright law authorizes the Register of Copyrights to issue regulations specifying the alternative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. For particular classes, the regulations may require or permit: the deposit of identifying material instead of copies or phonorecords; or "the deposit of only one copy or phonorecord where two would normally be required."

What Should You Deposit? The detailed requirements with respect to the kind of deposit to accompany an application on Form VA are contained in the Copyright

Office Regulations. The following does not cover all of the deposit requirements, but is intended to give you some general guidance.

For an Unpublished Work, the material deposited should represent the entire copyrightable content of the work for which registration is being sought.

For a Published Work, the material deposited should generally consist of two complete copies of the best edition. Exceptions: (1) for certain types of works, one complete copy may be deposited instead of two. These include greeting cards, postcards, stationery, labels, advertisements, scientific drawings, and globes; (2) for most three-dimensional sculptural works, and for certain two-dimensional works, the Copyright Office Regulations require deposit of identifying material (photographs or drawings in a specified form) rather than copies; and (3) under certain circumstances, for works published in five copies or less or in limited, numbered editions, the deposit may consist of one copy or of identifying reproductions.

FORM SR

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

SR	SRU
EFFECTIVE DATE OF REGISTRATION	
Month	Day
Year	

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK *

PREVIOUS OR ALTERNATIVE TITLES *

NATURE OF MATERIAL RECORDED * See instructions

☐ Musical ☐ Musical-Dramatic
☐ Dramatic ☐ Literary
☐ Other

2 a NAME OF AUTHOR * DATES OF BIRTH AND DEATH *

Was this contribution to the work a work made for hire?	AUTHOR'S NATIONALITY OR DOMICILE	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
☐ Yes	☐ Citizen of _____	Anonymously? ☐ Yes ☐ No
☐ No	☐ Domiciled in _____	Pseudonymously? ☐ Yes ☐ No

NOTE

Under the law, the author of a work made for hire is generally the employer, not the employee. For this part of this form, the employee is treated as the author. If the work is made for hire, the employer is the author. If the work is not made for hire, the employee is the author. If the work is made for hire, the employer is the author. If the work is not made for hire, the employee is the author. If the work is made for hire, the employer is the author. If the work is not made for hire, the employee is the author.

NATURE OF AUTHORSHIP * Briefly describe nature of the material created by this author in which copyright is claimed *

b NAME OF AUTHOR * DATES OF BIRTH AND DEATH *

Was this contribution to the work a work made for hire?	AUTHOR'S NATIONALITY OR DOMICILE	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
☐ Yes	☐ Citizen of _____	Anonymously? ☐ Yes ☐ No
☐ No	☐ Domiciled in _____	Pseudonymously? ☐ Yes ☐ No

NATURE OF AUTHORSHIP * Briefly describe nature of the material created by this author in which copyright is claimed *

c NAME OF AUTHOR * DATES OF BIRTH AND DEATH *

Was this contribution to the work a work made for hire?	AUTHOR'S NATIONALITY OR DOMICILE	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
☐ Yes	☐ Citizen of _____	Anonymously? ☐ Yes ☐ No
☐ No	☐ Domiciled in _____	Pseudonymously? ☐ Yes ☐ No

NATURE OF AUTHORSHIP * Briefly describe nature of the material created by this author in which copyright is claimed *

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information only if this work has been published	Complete this information only if this work has been published
Year	Year
Month	Month
Day	Day
Nation	Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 *

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright *

DO NOT WRITE HERE

MORE OR BACK * * Complete on separate sheets, numbers 5, 6, or the reverse side of this page

* See detailed instructions * Sign the form at the end

Page 1 of 1

EXAMINED BY _____	FORM SR
CHECKED BY _____	
☐ CORRESPONDENCE	
☐ DEPOSIT ACCOUNT	
☐ FUNDS USED	
	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author as copyright claimant.☐ This is a changed version of the work, as shown by space 4 on this application.

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 4 & 5b for a derivative work, complete only 5b for a compilation.

a. Preexisting Material Identify any preexisting work in works that this work is based on or incorporates ▼

b. Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name Address Apt. City State Zip ▼**CERTIFICATION** I, the undersigned, hereby certify that I am the

Check one ▼

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of (name or author or other copyright claimant, or owner of exclusive right(s)) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed in printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.



Handwritten signature (X) ▼

MAIL CERTIFICATE TO

Certificates will be mailed in advance envelopes

Name ▼

Number Street Apartment Number ▼

City State Zip ▼

Mail your:

- Completed and fee-ready spaces
- Signed your application in space 6
- Enclosed check or money order for \$10 payable to Register of Copyrights
- Enclosed your deposit material with the application and fee

MAIL TO: Register of Copyrights, Library of Congress, Washington, D.C. 20540

* 17 U.S.C. § 505(c): Any person who knowingly makes a false representation of a material fact in this application for copyright registration provided for by section 408 or in any written statement filed in connection with the application shall be fined not more than \$2,500.

• U.S. GOVERNMENT PRINTING OFFICE: 1982-361-278(2)

Sept. 1982 • 210-080

Filling Out Application Form SE

Detach and read these instructions before completing this form. Make sure all applicable spaces have been filled in before you return this form.

BASIC INFORMATION

When To Use This Form: Use a separate Form SE for registration of each individual issue of a serial. Class SE: A serial is defined as a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. This class includes a variety of works: periodicals, newspapers, annuals, the journals, proceedings, transactions, etc., of societies. Do not use Form SE to register an individual contribution to a serial. Request Form TX for such contributions.

Deposit to Accompany Application: An application for copyright registration must be accompanied by a deposit consisting of copies or phonorecords representing the entire work for which registration is to be made. The following are the general deposit requirements as set forth in the statute:

Unpublished Work: Deposit one complete copy (or phonorecord).

Published Work: Deposit two complete copies (or phonorecords) of the best edition.

Work First Published Outside the United States: Deposit one complete copy (or phonorecord) of the first foreign edition.

Mailing Requirements: It is important that you send the application, the deposit copy or copies, and the \$10 fee together in the same envelope or package. The Copyright Office cannot process them unless they are received together. Send to: Register of Copyrights, Library of Congress, Washington, D.C. 20559

The Copyright Notice: For published works, the law provides that a copyright notice in a specified form "shall be placed on all publicly distributed copies from which the work can be visually perceived." Use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from the Copyright Office. The required form of the notice for copies generally consists of three elements: (1) the symbol "©" or the word "Copyright," or the abbreviation "Copr."; (2) the year of first publication; and (3) the name of the owner of copyright. For example: "© 1981 National News Publishers, Inc." The notice is to be affixed to the copies "in such manner and location as to give reasonable notice of the claim of copyright." For further information about copyright registration, notice, or special questions relating to copyright problems, write:

Information and Publications Section, LM-455
Copyright Office, Library of Congress, Washington, D.C. 20559

PRIVACY ACT ADVISORY STATEMENT: Required by the Privacy Act of 1974 (PL 93-578)

The authority for requiring this information is title 17 U.S.C. secs. 409 and 410. Furnishing the requested information is voluntary. But if the information is not furnished, it may be necessary to delay or refuse registration and you may not be entitled to certain relief, remedies, and benefits provided in chapters 4 and 5 of title 17 U.S.C.

This principle uses of the requested information are the establishment and maintenance of a public record and the transmission of the application for compliance with legal requirements.

Other possible uses include public inspection and copying, preparation of public notices, preparation of public catalogs of copyright registrations, and production of search reports upon request.

NOTE: No other advisory statement will be given in connection with this application. Please keep the statement and note to it or communicate with you regarding the application.

LINE-BY-LINE INSTRUCTIONS

1 SPACE 1: Title

Title of This Serial: Every work submitted for copyright registration must be given a title to identify that particular work. If the copies or phonorecords of the work bear a title (or an identifying phrase that could serve as a title), copy that wording verbatim and exactly on the application. Give the volume and number of the periodical issue for which you are seeking registration. The "Date on copies" in space 1 should be the date appearing on the actual copies (for example, "June 1981," "Winter 1981"). Indexing of the registration and future identification of the work will depend on the information you give here.

Previous or Alternative Titles: Complete this space only if there are any additional titles for the serial under which someone searching for the registration might be likely to look, or under which a document pertaining to the work might be recorded.

2 SPACE 2: Author(s)

General Instructions: After reading these instructions, decide who are the "authors" of this work for copyright purposes. In the case of a serial issue, the organization which directs the creation of the serial issue as a whole is generally considered the author of the "collective work" (see "Nature of Authorship") whether it employs a staff or uses the efforts of volunteers. Where, however, an individual is independently responsible for the serial issue, name that person as author of the "collective work."

Name of Author: The fullest form of the author's name should be given. In the case of a "work made for hire," the statute provides that "the employer or other person for whom the work was prepared is considered the author." If this issue is a "work made for hire," the author's name will be the full legal name of the hiring organization, corporation, or individual. The title of the periodical should not ordinarily be listed as "author" because the title itself does not usually correspond to a legal entity capable of authorship. When an individual creates an issue of a serial independently and not as an "employee" of an organization or corporation, that individual should be listed as the "author."

Author's Nationality or Domicile: Give the country of which the author is a citizen, or the country in which the author is domiciled. Nationality or domicile must be given in all cases. The citizenship of an organization formed under United States Federal or state law should be stated as "U.S.A."

What is a "Work Made for Hire?" A "work made for hire" is defined as: (1) "a work prepared by an employee within the scope of his or her employment;" or (2) "a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." An organization that uses the efforts of volunteers in the creation of a "collective work" (see "Nature of Authorship") may also be considered the author of a "work made for hire" even though those volunteers were not specifically paid by the organization. In the case of a "work made for hire," give the full legal name of the employer and check "Yes" to indicate that the work was made for hire. You may also include the name of the employee along with the name of the employer (for example, "Ester Publishing Co., employer for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: Leave this space blank if the serial is a "work made for hire." An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if that author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous" you may: (1) leave the line blank; or (2) state "anonymous" on the line; or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank; or (2) give the pseudonym and identify it as such (for example, "Huntley Haverstock, pseudonym"); or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example, "Judith Barton, whose pseudonym is Madeline Ester"). However, the citizenship or domicile of the author must be given in all cases.

Dates of Birth and Death: Leave this space blank if the author's contribution to a "work made for hire." If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional, but is useful as a form of identification.

Nature of Authorship: Give a brief statement of the nature of the particular author's contribution to the work. If an organization directed, controlled, and supervised the creation of the serial issue as a whole, check the box "collective work." The term "collective work" means that the author is responsible for compilation and editorial revision, and may also be responsible for certain individual contributions to the serial issue. Further examples of "Authorship" which may apply both to organizational and to individual authors are "Entire text," "Entire text and/or illustrations," "Editorial revision, compilation, plus additional new material."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute, a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which this particular issue was completed.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending," a work is also "published" if there has been an "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display." Give the full date (month, day, year) when, and the country where, publication of this particular issue first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s): This space must be completed. Give the name(s) and address(es) of the copyright claimant(s) of this work even if the claimant is the same as the author named in space 2. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." A transfer of copyright ownership (other than one brought about by operation of law) must be in writing. If any copyright claimant named in space 4 is not an author named in space 2, give a brief, general statement describing the means by which that claimant obtained ownership of the copyright from the original author. Examples: "By written contract," "Written transfer of all rights by author," "Assignment," "Inherited by will." Do not attach the actual document of transfer or other attachments or riders.

5 SPACE 5: Previous Registration

General Instructions: This space applies only rarely to serials. Complete space 5 if this particular issue has been registered earlier or if it contains a substantial amount of material that has been previously registered. Do not complete this space if the previous registrations are simply those made for earlier issues.

Previous Registrations:

a. Check this box if this issue has been registered in unpublished form and a second registration is now sought to cover the first published edition.

b. Check this box if someone other than the author is identified as copyright claimant in the earlier registration and the author is now seeking registration in his or her own name. If the work in question is a contribution to a collective work, as opposed to the issue as a whole, file Form TX, not Form SE.

c. Check this box (and complete space 8) if this particular issue, or a substantial portion of the material in it, has been previously registered and you are now seeking registration for the additions and revisions which appear in this issue for the first time.

Previous Registration Number and Date: Complete this line if you checked one of the boxes above. If more than one previous registration has been made for the issue or for material in it, give only the number and year date for the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this issue is a "changed version," "compilation," or "derivative work," which incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain. Do not complete space 6 for an issue consisting of entirely new material appearing for the first time, such as a new issue of a continuing serial. A "compilation" is defined as "a work formed by the collection and assembling of preexisting materials or of data that are se-

lected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include translations, fictionalizations, abridgments, condensations, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): For derivative works, complete this space and space 6b. In space 6a identify the preexisting work that has been recast, transformed, adapted, or updated. Example: "1978 Morgan Co. Sales Catalog." Do not complete space 6a for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the new material covered by the copyright claim for which registration is sought. Derivative work examples include: "Editorial revisions and additions to the Catalog," "Translation," "Additional material." If a periodical issue is a compilation, describe both the compilation itself and the material that has been compiled. Examples: "Compilation of previously published journal articles," "Compilation of previously published data." An issue may be both a derivative work and a compilation, in which case a sample statement might be: "Compilation of [describe] and additional new material."

7 SPACE 7: Manufacturing Provisions

General Instructions: The copyright statute currently provides, as a general rule, that the copies of a published work "consisting preponderantly of nondramatic literary material in the English language" be manufactured in the United States or Canada in order to be lawfully imported and publicly distributed in the United States. If the work being registered is unpublished or not in English, leave this space blank. Complete this space if registration is sought for a published work "consisting preponderantly of nondramatic literary material that is in the English language." Identify those who manufactured the copies and where those manufacturing processes were performed. As an exception to the manufacturing provisions, the statute prescribes that, where manufacture has taken place outside the United States or Canada, a maximum of 2000 copies of the foreign edition may be imported into the United States without affecting the copyright owner's rights. For this purpose, the Copyright Office will issue an Import Statement upon request and payment of a fee of \$3 at the time of registration or at any later time. For further information about import statements, write for Form IS.

8 SPACE 8: Reproduction for Use of Blind or Physically Handicapped Individuals

General Instructions: One of the major programs of the Library of Congress is to provide Braille editions and special recordings of works for the exclusive use of the blind and physically handicapped. In an effort to simplify and speed up the copyright licensing procedures that are a necessary part of this program, section 710 of the copyright statute provides for the establishment of a voluntary licensing system to be tied in with copyright registration. Copyright Office regulations provide that you may grant a license for such reproduction and distribution solely for the use of persons who are certified by competent authority as unable to read normal printed material as a result of physical limitations. The license is entirely voluntary, nonexclusive, and may be terminated upon 90 days notice.

How to Grant the License: If you wish to grant it, check one of the three boxes in space 8. Your check in one of these boxes, together with your signature in space 10, will mean that the Library of Congress can proceed to reproduce and distribute under the license without further paperwork. For further information, write for Circular 863.

9, 10, 11 SPACE 9, 10, 11: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 9. Otherwise leave the space blank and send the fee of \$10 with your application and deposit.

Correspondence (space 9): This space should contain the name, address, area code, and telephone number of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 10): The application cannot be accepted unless it bears the date and the handwritten signature of the author or other copyright claimant, or of the owner of exclusive right(s), or of the duly authorized agent of the author, claimant, or owner of exclusive right(s).

Address for Return of Certificate (space 11): The address box must be completed legibly since the certificate will be returned in a window envelope.

FORM SE

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS SERIAL

Volume Number Date on Copies Frequency of Publication

PREVIOUS OR ALTERNATIVE TITLES

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Was this contribution to the work a

AUTHOR'S NATIONALITY OR DOMICILE

WAS THIS AUTHOR'S CONTRIBUTION TO

the work a "work made for hire"?

Name of Country

THE WORK

☐ Yes☐ No

OR

Citizen of

Domiciled in

Anonymous?

Pseudonymous?

☐ Yes ☐ No☐ Yes ☐ No

If the answer to either of these questions is "Yes," see circular 1.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed.

☐ Collective Work ☐ Other

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Was this contribution to the work a

AUTHOR'S NATIONALITY OR DOMICILE

WAS THIS AUTHOR'S CONTRIBUTION TO

the work a "work made for hire"?

Name of Country

THE WORK

☐ Yes☐ No

OR

Citizen of

Domiciled in

Anonymous?

Pseudonymous?

☐ Yes ☐ No☐ Yes ☐ No

If the answer to either of these questions is "Yes," see circular 1.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed.

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the work a "work made for hire"?

Name of Country

THE WORK

☐ Yes☐ No

OR

Citizen of

Domiciled in

Anonymous?

Pseudonymous?

☐ Yes ☐ No☐ Yes ☐ No

If the answer to either of these questions is "Yes," see circular 1.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed.

☐ Collective Work ☐ Other

YEAR IN WHICH CREATION OF THIS

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR ISSUE

ISSUE WAS COMPLETED

This information must be given in all cases.

ONLY if this work has been published.

Month Day Year

4 Year

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

MORE ON BACK

Complete all applicable circular numbers 1-11 on the reverse side of this page.

See circular 11.

DO NOT WRITE HERE

Page 1 of 1 pages

EXAMINED BY _____ CHECKED BY _____ ☐ CORRESPONDENCE ☐ DEPOSIT ACCOUNT FUNDS USED	FORM 5E FOR COPYRIGHT OFFICE USE ONLY
--	---

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this issue, or for an earlier version of this particular issue, already been made in the Copyright Office?

☐ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) 5

a. ☐ This is the first published version of an issue previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of this issue, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number _____ Year of Registration _____

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation. 6

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. _____

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. _____

MANUFACTURERS AND LOCATIONS If this is a published work consisting predominantly of nondramatic literary matter in English, the law may require that the copies be manufactured in the United States or Canada for full protection. If so, the names of the manufacturers who performed certain processes, and the places where those processes were performed must be given. See instructions for details. 7

Names of Manufacturers _____ Places of Manufacture _____

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols), or (2) phonorecords embodying a fixation of a reading of that work, or (3) both. 8

a. ☐ Copies and Phonorecords b. ☐ Copies Only c. ☐ Phonorecords Only

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 9

Name _____ Account Number _____

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name, Address, Apt. Or Suite, Zip _____

Area Code & Telephone Number _____

CERTIFICATION* I, the undersigned, hereby certify that I am the: 10

Check one: ☐ author ☐ other copyright claimant ☐ owner of exclusive rights ☐ authorized agent of _____

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date: _____ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

MAIL CERTIFICATE TO 11

Handwritten signature (S) _____ Date _____

Name _____ Number Street Apartment Number _____ City, State, ZIP _____	Name, title: _____ * Completed or received: _____ * Signed into application in space 10 * Enclosed check in money order to EIC (enclose to Register or Copyrights) * Enclosed other relevant material and the application fee (S) Mail, To: Register of Copyrights, Library of Congress, Washington, D.C. 20540
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CAUTION: will be mailed in window envelope

* 17 U.S.C. § 505(a): Any person who knowingly makes a false representation of a material fact in this application for copyright registration provided for by section 408, or in any written statement filed in connection with this application, shall be fined no more than \$2,000.

* U.S. GOVERNMENT PRINTING OFFICE: (48) 361-279/96

THIS FORM:

- Can be used solely as an adjunct to a basic application for copyright registration
- Is not acceptable unless submitted together with Form TX, Form PA, or Form VA
- Is acceptable only if the group of works listed on it all qualify for a single copyright registration under 17 U.S.C. § 408 (c)(2)

FORM GR/CP

UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
WASHINGTON, D.C. 20559

ADJUNCT APPLICATION *for Copyright Registration for a Group of Contributions to Periodicals*

WHEN TO USE FORM GR/CP: Form GR/CP is the appropriate adjunct application form to use when you are submitting a basic application on Form TX, Form PA, or Form VA, for a group of works that qualify for a single registration under section 408(c)(2) of the copyright statute.

WHEN DOES A GROUP OF WORKS QUALIFY FOR A SINGLE REGISTRATION UNDER 17 U.S.C. § 408 (c)(2)? The statute provides that a single copyright registration for a group of works can be made if **all** of the following conditions are met:

- (1) All of the works are by the same author, who is an individual (not an employer or hire); and
- (2) All of the works were first published as contributions to periodicals (including newspapers) within a twelve month period; and
- (3) Each of the contributions as first published bore a separate copyright notice, and the name of the owner of copyright in the work (or an abbreviation or alternative designation of the owner) was the same in each notice; and
- (4) One copy of the entire periodical issue or newspaper section in which each contribution was first published must be deposited with the application; and
- (5) The application must identify each contribution separately, including the periodical containing it and the date of its first publication.

How to Apply for Group Registration:

- First:** Study the information on this page to make sure that all of the works you want to register together as a group qualify for a single registration.
- Second:** Turn this page over and read through the detailed instructions for group registration. Decide which form you should use for the basic registration (Form TX for nondramatic literary works, or Form PA for musical, dramatic, and other works of the performing arts, or Form VA for pictorial and graphic works). Be sure that you have all of the information you need before you start filling out both the basic and the adjunct application forms.
- Third:** Complete the basic application form, following the detailed instructions accompanying it **and the special instructions on the reverse of this page**.
- Fourth:** Complete the adjunct application on Form GR/CP and mail it, together with the basic application form and the required copy of each contribution, to: Register of Copyrights, Library of Congress, Washington, D.C. 20559. Unless you have a Deposit Account in the Copyright Office, your application and copies must be accompanied by a check or money order for \$10, payable to: Register of Copyrights.

PROCEDURE FOR GROUP REGISTRATION

TWO APPLICATION FORMS MUST BE FILED

When you apply for a single registration to cover a group of contributions to periodicals, you must submit two application forms:

(1) A basic application on either Form TX or Form PA, or Form VA. It must contain all of the information required for copyright registration except the titles and information concerning publication of the contributions.

(2) An affidavit application on Form GR-CP. The purpose of this form is to provide separate identification for each of the contributions and to give information about their free publication, as required by the statute.

WHICH BASIC APPLICATION FORM TO USE

The basic application form you choose to submit should be determined by the nature of the contributions you are registering. As long as they meet the statutory qualifications for group registration (outlined on the reverse of this page), the contributions can be registered together even if they are entirely different in nature, type, or content. However, you must choose which of these forms is generally the most appropriate on which to submit your basic application.

Form TX: for nonliterary literary works consisting primarily of text. Examples are fiction, verse, articles, news stories, features, essays, reviews, editorials, columns, queries, puzzles and advertising copy.

Form PA: for works of the performing arts. Examples are music, drama, choreography, and pantomimes.

Form VA: for works of the visual arts. Examples are photographs, drawings, paintings, prints, art reproductions, cartoons, comic strips, charts, diagrams, maps, pictorial ornamentation, and pictorial or graphic material published as advertising.

If your contributions differ in nature, choose the form most suitable for the majority of them. However, if any of the contributions consists preponderantly of nondramatic text matter in English, you should file Form TX for the entire group. This is because Form TX is the only form containing space for information about the manufacture of copies, which the statute requires to be given for certain works.

REGISTRATION FEE FOR GROUP REGISTRATION

The fee for registration of a group of contributions to periodicals is \$10; no more than two many contributions are based on Form GR-CP. Unless you maintain a Deposit Account in the Copyright Office, the registration fee must accompany your application forms and copies. Make your remittance payable to: Register of Copyrights.

WHAT COPIES SHOULD BE DEPOSITED FOR GROUP REGISTRATION?

The application forms you file for group registration must be accompanied by one complete copy of each contribution listed in Form GR-CP, exactly as the contribution was first published in a periodical. The deposit must consist of the entire issue of the periodical containing the contribution, or, if the contribution was first published in a newspaper, the deposit should consist of the entire section in which the contribution appeared. Two sheets or proof copies are not acceptable for deposit.

COPYRIGHT NOTICE REQUIREMENTS

For published works, the law provides that a copyright notice in a specified form shall be placed on all publicly distributed copies from which the work can be used, perceived. The required form of the notice generally consists of three elements: (1) the symbol "©" or the word "Copyright," or the abbreviation "Copr."; (2) the year of first publication of the work; and (3) the name of the owner of copyright in the work, or an abbreviation or alternative form of the name. For example: "© 1978 Samuel Craig."

Among the conditions for group registration of contributions to periodicals, the statute establishes two requirements involving the copyright notice:

(1) Each of the contributions as first published must have borne a separate copyright notice; and

(2) The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner, must have been the same in each issue.

NOTE: The advantage of group registration is that it allows any number of works published within a twelve-month period to be registered on the basis of a single deposit application and registration fee. On the other hand, group registration may also have disadvantages under certain circumstances. If infringement of a published work begins before the work has been registered, the copyright owner can still obtain the ordinary remedies for copyright infringement.

HOW TO FILL OUT THE BASIC APPLICATION FORM WHEN APPLYING FOR GROUP REGISTRATION

In general, the instructions for filling out the basic application (Form TX, Form PA, or Form VA) apply to group registrations. In addition, please observe the following specific instructions:

Space 1 (Title): Do not give information concerning any of the contributions in space 1 of the basic application. Instead, in the block headed "Title of the Work," state "See Form GR-CP attached." Leave the other blocks in space 1 blank.

Space 2 (Author): Give the name and other information concerning the author of all of the contributions listed in Form GR-CP. To qualify for group registration, all of the contributions must have been written by the same individual author.

Space 3 (Creation and Publication): In the block calling for the year of creation, give the year of creation of the last of the contributions to be completed. Leave the block calling for the date and reason of first publication blank.

Space 4 (Claimant): Give all of the requested information, which must be the same for all of the contributions listed in Form GR-CP.

Other spaces: Complete all of the applicable spaces, and be sure that the form is signed in the certification space.

HOW TO FILL OUT FORM GR-CP

PART A: IDENTIFICATION OF APPLICATION

Identification of Basic Application: Indicate, by checking one of the boxes, which of the basic application forms (Form TX or Form PA, or Form VA) you are filing for registration.

Identification of Author and Claimant: Give the name of the individual author exactly as it appears in line 2 of the basic application, and give the name of the copyright claimant exactly as it appears in line 4. These must be the same for all of the contributions listed in Part B of Form GR-CP.

PART B: REGISTRATION FOR GROUP OF CONTRIBUTIONS

General Instructions: Under the statute, a group of contributions to periodicals will qualify for a single registration only if the application "identifies each work separately, including the periodical containing it and its date of first publication." Part B of the Form GR-CP provides lines enough to list 19 separate contributions. If you need more space, use additional Forms GR-CP. It is possible for the contributions in the order of their publication, giving the earliest first. Number each line consecutively.

Important: All of the contributions listed on Form GR-CP must have been published within a single twelve-month period. This does not mean that all of the contributions must have been published during the same calendar year, but it does mean that to be grouped in a single application, the earliest and latest contributions must not have been published more than twelve months apart. Example: Contributions published on April 1, 1978, July 1, 1978, and March 1, 1979, could be grouped together, but a contribution published on April 15, 1979, could not be registered with them as part of the group.

Title of Contribution: Each contribution must be given a title that is capable of identifying that particular work and of distinguishing it from others. If the contribution as published in the periodical bears a title (or an identifying phrase that could serve as a title) in its entirety or in its entirety and exactly.

Identification of Periodical: Give the entire title of the periodical in which the contribution was first published together with the volume and issue number (if any) and the issue date.

Pages: Give the number of the page of the periodical issue on which the contribution appeared. If the contribution covered more than one page, give the inclusive pages, if possible.

First Publication: The statute defines publication as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. A work is also published if there has been an offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display. Give the full date (month, day, and year) when and the country where publication of the periodical issue containing the contribution first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

Infringement (including reprints, actual damages and profits, and impounding and disposition of infringing articles). However, in that situation—where the copyright in a published work is infringed before registration is made—the owner cannot obtain special remedies (statutory damages and attorney's fees), unless registration was made within three months after first publication of the work.

ADJUNCT APPLICATION

for Copyright Registration for a Group of Contributions to Periodicals

FORM GR/CP

UNITED STATES COPYRIGHT OFFICE

• Use this adjunct form only if you are making a single registration for a group of contributions to periodicals, and you are also filing a basic application on Form TX, Form PA, or Form VA. Follow the instructions attached.

• Number each line in Part B consecutively. Use additional Forms GR/CP if you need more space.

• Submit this adjunct form with the basic application form. Clip (do not tape or staple) and fold all sheets together before submitting them.

REGISTRATION NUMBER		
TX	PA	VA
EFFECTIVE DATE OF REGISTRATION		
Month	Day	(Year)
FORM GR/CP RECEIVED		
Page _____ of _____ pages		

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

A Identification of Application	IDENTIFICATION OF BASIC APPLICATION: • This application for copyright registration for a group of contributions to periodicals is submitted as an adjunct to an application filed on (Check which) ☐ Form TX ☐ Form PA ☐ Form VA
	IDENTIFICATION OF AUTHOR AND CLAIMANT: (Give the name of the author and the name of the copyright claimant in all of the contributions listed in Part B of this form. The names should be the same as the names given in spaces 2 and 4 of the basic application.) Name of Author _____ Name of Copyright Claimant _____

B Registration For Group of Contributions	COPYRIGHT REGISTRATION FOR A GROUP OF CONTRIBUTIONS TO PERIODICALS: (To make a single registration for a group of works by the same individual author, all first published as contributions to periodicals within a 12 month period (see instructions), give full information about each contribution. If more space is needed, use additional Forms GR/CP.)				
	☐	Title of Contribution _____ Title of Periodical _____ Date of First Publication _____ (Month) _____ (Day) _____ (Year)	Vol _____ No _____ Name of First Publication _____	Issue Date _____ (Month) _____ (Day) _____ (Year)	Pages _____ (Count) _____
	☐	Title of Contribution _____ Title of Periodical _____ Date of First Publication _____ (Month) _____ (Day) _____ (Year)	Vol _____ No _____ Name of First Publication _____	Issue Date _____ (Month) _____ (Day) _____ (Year)	Pages _____ (Count) _____
	☐	Title of Contribution _____ Title of Periodical _____ Date of First Publication _____ (Month) _____ (Day) _____ (Year)	Vol _____ No _____ Name of First Publication _____	Issue Date _____ (Month) _____ (Day) _____ (Year)	Pages _____ (Count) _____
	☐	Title of Contribution _____ Title of Periodical _____ Date of First Publication _____ (Month) _____ (Day) _____ (Year)	Vol _____ No _____ Name of First Publication _____	Issue Date _____ (Month) _____ (Day) _____ (Year)	Pages _____ (Count) _____
	☐	Title of Contribution _____ Title of Periodical _____ Date of First Publication _____ (Month) _____ (Day) _____ (Year)	Vol _____ No _____ Name of First Publication _____	Issue Date _____ (Month) _____ (Day) _____ (Year)	Pages _____ (Count) _____
	☐	Title of Contribution _____ Title of Periodical _____ Date of First Publication _____ (Month) _____ (Day) _____ (Year)	Vol _____ No _____ Name of First Publication _____	Issue Date _____ (Month) _____ (Day) _____ (Year)	Pages _____ (Count) _____

	FOR COPYRIGHT OFFICE USE ONLY
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DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

☐	Title of Contribution Title of Periodical Date of First Publication	Month: Day: Year: (19)	Vol. No. Issue Date Nation of First Publication	Pages	B Continued
☐	Title of Contribution Title of Periodical Date of First Publication	Month: Day: Year: (19)	Vol. No. Issue Date Nation of First Publication	Pages	
☐	Title of Contribution Title of Periodical Date of First Publication	Month: Day: Year: (19)	Vol. No. Issue Date Nation of First Publication	Pages	
☐	Title of Contribution Title of Periodical Date of First Publication	Month: Day: Year: (19)	Vol. No. Issue Date Nation of First Publication	Pages	
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☐	Title of Contribution Title of Periodical Date of First Publication	Month: Day: Year: (19)	Vol. No. Issue Date Nation of First Publication	Pages	
☐	Title of Contribution Title of Periodical Date of First Publication	Month: Day: Year: (19)	Vol. No. Issue Date Nation of First Publication	Pages	

OTHER PUBLICATIONS AVAILABLE FROM THE COPYRIGHT OFFICE

In addition to the official copyright registration forms reprinted on the preceding pages, the Copyright Office has available many other publications covering in more detail various aspects of registering a copyright. To obtain additional forms or other publications, schools districts may call the Hotline of the Copyright Office at anytime to leave a message specifying the materials desired, (202) 287-9100. If additional information about copyright is needed, call the Copyright Public Information Office at (202) 287-8700 weekdays between 8:30 a.m. and 5:00 p.m. (EST). Below is a list of some of the publications which may be useful to school districts.

Circular/ Publication No.	Title
R1	Copyright Basics
R1b	Limitations on the Information Furnished by the Copyright Office
R1c	Copyright Registration Procedures
R4	Copyright Fees
R7b	"Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress
R7d	Mandatory Deposit of Copies or Phonorecords for the Library of Congress
R8	Supplementary Copyright Registration
R9	Works-Made-for-Hire Under the 1976 Copyright Act
R30	Special Postage Rates for Deposit Copies Mailed to the Copyright Office
R31	Ideas, Methods or Systems
R34	Copyright Protection Not Available for Names, Titles or Short Phrases
R40b	Deposit Requirements for Registration of Claims to Copyright in Visual Arts Material
R45	Copyright Registration for Motion Pictures Including Video Recordings
R50	Copyright Registration for Musical Compositions
R56	Copyright for Sound Recordings
R56a	Copyright Registration for Musical Compositions and Sound Recordings
R61	Copyright Registration for Computer Programs
R96	Methods of Affixation and Positions of the Copyright Notice on Various Types of Works

ML-212	Final Regulations. Part 202—Registration of Claims to Copyright. Deposit Requirements
14	New Versions and Reprints
unnumbered	Motion Picture Deposit Leaflet
unnumbered	Motion Picture Agreement Leaflet
C-779	Motion Picture Agreement
unnumbered	Copyright Registration for Multi-Media Kits

APPENDIX XII

SAMPLE POLICY AND LETTER

Obtaining Permission to Use Copyrighted Materials

When preparing and writing materials for publication by the Department of Instructional Services, careful attention should be given to obtaining permission to use copyrighted materials. It is not safe to assume that rhymes, poems, songs, or stories that one has used for years are in the public domain. The best method is to locate a source for the material, write the appropriate letter asking for permission to use the material and then if the material is in the public domain, the publisher will inform you. Copyrighted materials may be mentioned or referenced without permission. The following procedures should be followed in obtaining permission:

- A. Locate a source (book, publication, etc.) containing the desired material. Help may be obtained in locating references from the professional library, *Grangers's Index to Poetry*, Columbia University Press, or *Children's Books in Print*, R.R. Bowker.
- B. Determine by looking on the page of the reference or in the acknowledgment section if the publisher of the book or publication owns the copyright or attributes it to another source. If the publisher gives no one else credit, then you may assume at this point that the publisher of the reference owns the copyright.
- C. Write to the publisher of the book or publication or to the publisher credited with the copyright for written permission to use the material. (Note: Addresses of publishers may be obtained from *Books in Print* by Bowker or *Music Publishers' Association, Inc.*, 110 East 59th St., New York, N.Y. 10022, 215-751-1930.)
- D. Include the following items of information in a letter addressed to the Permissions Department of the publisher:
 1. Request for written permission to use material.
 2. Specific information related to the material you wish to use (name and author of book, copyright date, page numbers).
 3. Nature of the publication in which material will be included. (Note: Emphasize educational use as most companies will allow usage of material for educational publications which are not sold for profit. However,

some companies will not relinquish standard fees which run from \$25 and up.)

4. Number of editions to be published.
 5. Number of copies to be printed.
 6. Approximate length of time the publication will be in use as a curriculum guide, text, etc. (Note: Not required by all publishers.)
 7. People to whom book will be distributed (teachers, principals, etc.).
 8. Price of book or intention to distribute gratis.
 9. Request for the acknowledgement desired by the publisher.
 10. Date by which information is needed.
(Note: A sample letter is included for your information.)
- E. Research material for which you do not have a reference at the copyright office in _____ (city) _____.
1. Search files for title or author. (Note: As card catalogues are categorized by years, several different card catalogues must be researched for one title.)
 2. Check all possible variations of title.
 3. After locating title, check assignee-assignor file to make certain the copyright has not been reassigned to another company since the printing of the title card.
 4. When locating a reference for materials in the card catalogue, be certain to write down the copyright number and E U number as you may later need to request a look at the original copyright application in order to obtain the address of the copyright owner.
 5. If you are not certain the item found in the card catalogue is the correct item, request a look at the original copy of the book, poem, song, etc. (Note: This services costs \$10 an hour for search and takes approximately two weeks.)

SAMPLE LETTER

**FAIRFAX COUNTY PUBLIC SCHOOLS
DEPARTMENT OF INSTRUCTIONAL SERVICES
DIVISION OF CURRICULUM SERVICES
6131 Willston Drive
Falls Church, Virginia 22044**

April 28, 1981

Mrs. Beverly Wright
Permissions Department
Silver Burdett Company
250 James Street
Morristown, New Jersey 07960

Dear Mrs. Wright:

We would like written permission to use the songs "The Mad Man" and "The Sow Took the Measles" from *Silver Burdett Music*, Grade 3, (c) 1981. We are in the process of printing an activities handbook titled *The Little Music House, Level Three*. This book will assist our teachers in carrying out the objectives in the Fairfax County Primary Program of Studies.

There will be one edition of the handbook and 600 copies printed. The handbook will be distributed at no cost to the teachers of Fairfax County Public Schools as part of a curriculum development project. A few copies will be available to interested school systems upon request at a nominal printing cost.

We would print the songs with the acknowledgment you indicate.

It is important for us to receive an answer by May 8, 1981. I appreciate your help in this matter. Thank you for your prompt consideration and response.

Sincerely,

Lynn Arizzi
General Music Curriculum Assistant

LA/jab

APPENDIX XIII
SAMPLE POLICY

**Including Teacher Created
Original materials
in County Publications**

- A. Obtain written permission from teachers to use created materials in county publications. (See sample)
- B. Acknowledge the original contributions of teachers on an acknowledgment page in the publication. (See sample)
- C. As Fairfax County is the copyright holder of county publications, teachers wishing to use materials contributed to county publications in other publications must apply to the School-Community Relations Office via the method in paragraph three of Regulation 1120.

SAMPLE PERMISSION FORM

I understand that the original materials I contributed to the Level One Edition of *The Little Red Music House* will be copyrighted by the County School Board of Fairfax County. I also understand that my name will be included on the acknowledgment page as one of the persons who has contributed to this publication.

Signed _____

SAMPLE ACKNOWLEDGMENT PAGE

ACKNOWLEDGMENTS

The following teachers contributed original songs, poems, and ideas for the kindergarten activities found in this guide: Lynn Arizzi, Gail Cope, Judy Henneberger, Tamar DeFries Lieberman, Holly Mounier, Jean Zahniser, Evelyn Wiesent, Pat Orin.

The manuscript was typed by Wanda Germand and Myra Brown.

Graphics were created by Lynette C. Speake, Division of Media Services.

Grateful acknowledgment is given to the following publishers for songs and poems appearing in the manuscript:

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The University Press of Virginia. "It Rained a Mist" from *Traditional Ballads of Virginia* by Arthur Kyle Davis. (c) 1969 by the University Press of Virginia. Used by permission.

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APPENDIX XIV
SAMPLE POLICIES

**Professional Research and Publishing
(Ownership of Employee-Produced
Instructional Materials)**

BOARD POLICY:

IN ORDER TO ENCOURAGE EMPLOYEE CREATIVITY AND TO PROTECT THE RIGHTS OF BOTH THE CREATIVE EMPLOYEE AND THE PUBLIC, THE ADMINISTRATION SHALL ESTABLISH PROCEDURES TO CLEARLY ASSIGN THE RIGHTS OF OWNERSHIP OF EMPLOYEE-PRODUCED INSTRUCTIONAL MATERIALS.

Administrative Implemental Procedures:

1. Rights of ownership, as used herein, include the right to copyright or patent and the right to sell and/or distribute.
2. The Board has all rights of ownership of instructional materials produced by an employee during hours that the employee was paid by the Board.
3. The Board has all rights of ownership of instructional materials produced by an employee in which the use of Board supplies and/or equipment played a dominant role.
4. Ownership of instructional materials produced by an employee in a federal program during hours that the employee was paid by federal funds and/or in which the use of federally funded supplies or equipment played a dominant role lies in the public domain.
5. The employee has all rights of ownership of instructional materials produced by the employee other than during those hours paid by the Board and in which the use of Board supplies and equipment did not play a dominant role.
6. The school district may enter into an agreement in advance with an employee to produce instructional materials. In such cases, the agreement shall assign whatever rights of use and ownership as may be appropriate.
7. If doubt exists as to whom the rights of ownership belong, a written agreement may be executed by the employee and the appropriate representative(s) of the district. If the employee does not initiate and enter into such an agreement within one year of the completion of the material, the rights of ownership shall pass to the Board. Forms for such agreement may be obtained from the Director of the Instructional Materials Center. Listed below are the procedures to be followed:

- a. The employee producer will obtain forms from the Instructional Materials Center and complete the original with two copies for each claim.
 - b. The original and two copies will be referred to the Director of Curriculum Services Division for review.
 - c. After review, the Director of Curriculum Services Division approves or denies the request. If approved, it will be forwarded to the Clerk of the Board of Education for final signature. If denied, the reasons shall be prepared in writing and forwarded to the employee.
 - d. One signed copy of the final agreement will be forwarded to the initiating employee, one copy will be forwarded for filing in the office of the Director of Curriculum, and one copy will be retained by the Clerk of the Board of Education.
8. The agreement referred to in 7 above shall provide:
- a. A specific description of all material covered by the agreement.
 - b. A statement by the employee that the material was not produced during hours paid for by the Board and that the use of school supplies and/or equipment did not play a dominant role in the production.
 - c. That the employee is the owner of such material for all time and may alter such material as he/she chooses.
 - d. That the Board shall have free use of such material for all time and may alter such material as it chooses.
 - e. That the Board will not distribute such material to persons outside Unified School District 259 without the written consent of the employee.
 - f. That the employee may copyright or patent the material as he/she chooses insofar as the Board is concerned.
 - g. That the employee may distribute and/or sell the material as he/she chooses insofar as the Board is concerned.

SOURCE: Wichita Public Schools, Wichita, Kansas

DATE: 6/78

Professional Research and Publishing

Ownership of Materials

The Board of Education adopts the "work for hire doctrine," and shall have the copyright of all employees' work produced at the instance and expense of the Board and/or any of its administrative staff.

Works authored by employees on their own time, without expense to the Board, and without instruction, direction, or control of the employees' superiors are the copyright of the employees.

Waiver and Assignment of Proprietary Rights

Copyrights of the Board of Education may be waived in favor of or assigned to the author by the Board upon application submitted to the Board through the superintendent.

The Board authorizes the superintendent to review materials prepared by employees for which the Board has no copyright, and to waive or assign all or part of any interest or proprietary rights therein which it is alleged the Board may have, in favor of the employees producing such works.

No materials, whether the copyright of the Board or of the employees producing the same, shall be purchased by the Flint Community Schools unless such materials are free of copyright and royalty charges.

Flint Community School Publications

The Board authorizes the superintendent to sell instructional materials which have been prepared by the Flint Community Schools, or in which the Board shall claim a copyright, to other school systems, organizations, or commercial firms desiring to purchase copies or obtain reproduction rights.

LEGAL REFS.: Title 17, U.S. Code (PL 94-552, 10/19/76) (Copyright law)

SOURCE: Flint Community Schools, Flint, Michigan

DATE: 7/74

Professional Research and Publishing

School Board employees are encouraged to write and prepare professional material and devices for publication in their areas of expertise. The Department of School-Community Relations is prepared to offer advice and editorial and copyright assistance to employees who engage in these efforts.

There is no requirement for employees who prepare material on their own time, without use of school facilities or equipment, to submit such material for review prior to publication.

Employees who desire to copyright or patent, and to market, material prepared totally or partially on school time should submit a copy of such material to the Division Superintendent for review. The material should be accompanied by the following information: the name of persons who participated in preparation of the material; the percentage of duty time spent by these person during preparation; and a statement as to whether royalties would be waived in any purchases of the material which might be made by the Fairfax County Public Schools.

The Division Superintendent may authorize the sale of copies of, or reproduction rights to, instructional material prepared by the Fairfax County Public Schools to other school systems, organizations, or commercial firms.

Material submitted to the Division Superintendent as provided above shall be referred to a Publications Advisory Board for review and recommendation, which will include, as appropriate, whether or not a waiver of all or part of School Board proprietary rights should be granted to an individual or individuals. The Advisory Board shall be composed as follows: associate superintendent for operations, chairman; associate superintendent for school services; and director of school-community relations.

SOURCE: Fairfax County Public Schools, Fairfax, Virginia

DATE: 1/2/76

Professional Research and Publishing (Ownership, Copyright, Royalties)

Copyrights

Copyrights shall be obtained for all instructional materials produced by the Shoreline School District when said materials are deemed worthy of copyrighting by the Superintendent's office. The copyrighting shall be done whether the authors be one or more staff members. Said copyright shall be appropriately printed on the instructional materials and shall be obtained in the name of the Shoreline School District #412, Seattle, Washington. Upon revision of at least 20% of these instructional materials, a new copyright shall be applied for and, if the revision has been done at district expense, said new copyright shall be obtained in the name of Shoreline School District #412, Seattle, Washington. Release of said copyrights, whether for a monetary return or not, shall be at the discretion of the Shoreline Board of Directors.

Royalties

The Shoreline School District encourages its staff to participate in the authorship of instructional materials. Recognizing the creative contribution of its staff to such materials, and the obligation of authors to bear the burden of continued revision of materials for commercial publication, the District wishes to see such authorship rewarded through a fair participation in royalties. The amount of participation in royalties shall be negotiated between the Shoreline School District and the author(s) prior to the release of said instructional materials for commercial publication.

District Purchase of Instructional Materials Authored by Staff Members

Instructional materials authored by staff members may be presented for District basic adoption and/or supplementary use but shall be subject to the same criteria as similar material produced outside the District. In order to avoid possible accusations of conflict of interest, the royalties due current staff members from said instructional materials purchased by the Shoreline School District shall be waived by these staff members. This policy refers to authorship both prior to and current with employment in the Shoreline School District. (This policy does not relate to members of author teams other than the Shoreline School employees.)

SOURCE: Shoreline School District #412, Seattle, Washington

DATE: 2/20/70

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